

CAUSE NO. _____

HARRIS COUNTY, TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
and the	§	
	§	
STATE OF TEXAS	§	
Acting by and through the Texas	§	
Commission on Environmental Quality,	§	HARRIS COUNTY, TEXAS
a Necessary and Indispensable Party	§	
	§	
v.	§	
	§	
PULLMAN-SAGE PROCESSING, LLC	§	
Defendant.	§	_____ JUDICIAL DISTRICT

HARRIS COUNTY’S ORIGINAL PETITION, APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS, AND REQUEST FOR DISCLOSURE

Harris County, Texas files this Original Petition, Application for Temporary and Permanent Injunctions, and Request for Disclosure.

1. DISCOVERY

1.1. Harris County will conduct discovery under a Level 2 Discovery Control Plan pursuant to Tex. R. Civ. P. 190.

1.2. This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because the County seeks non-monetary injunctive relief.

2. NATURE OF SUIT

2.1. This is a civil suit to enforce the Texas Water Code and Texas Commission on Environmental Quality (TCEQ) administrative rules for handling of industrial solid waste. Pullman Sage Processing, LLC is a Chicago-based company that operates a custom sugar blending & refining facility at 101 E. Barbours Cut Boulevard in the City of Morgan’s Point, Texas 77571. The defendant has been discharging sugar waste into a public waterway.

3. REQUEST FOR DISCLOSURE

3.1. Pursuant to Tex. R. Civ. P. 194, the Defendant is requested to disclose, within fifty (50) days of service of this request, the information or material described in Tex. R. Civ. P. 194.2(a)—(i) and (l).

4. PARTIES

4.1. Plaintiff Harris County, Texas is a political subdivision of the State of Texas. It is authorized to bring this suit under the authority granted in § 7.351(a) of the Texas Water Code.

4.2. The State of Texas, acting on behalf of the Texas Commission on Environmental Quality (TCEQ or Commission), is a necessary and indispensable party to this lawsuit pursuant to Tex. Water Code § 7.353. Service on the State is not necessary at this time.

4.3. Defendant Pullman Sage Processing, LLC may be served with citation by serving its registered agent, Corporation Service Company dba CSC – Lawyers Incorporated Service Company at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

5. JURISDICTION AND VENUE

5.1. The Court has jurisdiction and venue is proper in Harris County pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) and Tex. Water Code § 7.105(c).

6. FACTS

6.1. On July 13, 2019, Harris County Pollution Control Services sent investigator Christopher Montague to 101 E. Barbours Cut Boulevard, Morgan's Point, Texas 77571. He determined that poor housekeeping allowed sugar-based material to comingle with storm water and enter a local Harris County Flood Control Ditch, FCD Unit #F210-00-00.

6.2. On June 30, 2020, Harris County Pollution Control Services investigators Bill Everett, Israel Garza, and Amy Guardado inspected the Defendant's facility. They determined that poor

housekeeping allowed sugar-based material to comingle with storm water and enter a local Harris County Flood Control Ditch, FCD Unit #F210-00-00.

6.3. On July 6, 2020, Harris County investigators T. Saenz and Israel Garza inspected the Defendant's facility. They observed sugar waste scattered on the ground, on the walls of the rail car pit, and spilling through a bay door. They also observed evidence of solid sugar waste discharged into a storm drain.

6.4 On July 17, 2020, Harris County investigator Israel Garza conducted an inspection of the Pullman Sage Processing facility. He observed an employee power washing sugar residue from a wall inside the facility railcar bay. This sugar residue from the Defendant's manufacturing process missed with water from the cleaning activities and was then observed entering a storm drain directly outside bay doors of the facility.

6.5. On July 20, 2020, Harris County investigator Eric Bergholtz conducted an inspection of the Pullman Sage Processing facility. He observed heavy accumulations of spilled granular sugar in the Defendant's laydown yard/maintenance area and outside the railcar loading/unloading enclosure. He also observed waste leachate discharging to the ground from the Defendant's waste collection roll-off unit. Mr. Bergholtz determined that sugar was mixing with water and flowing off-site into a public waterway.

6.6. On August 17, 2020, Harris County investigators Israel Garza and Megan Rasefske conducted an inspection of the Pullman facility. They observed a shallow stream of water flowing over spilled white sugar residue on the pavement near the company's sucrose loading area. The sugar residue originated from the Defendant's manufacturing process. After mixing with water from a nearby hose, it discharged into a storm drain adjacent to the Defendant's facility and entered a public waterway.

7. APPLICABLE LAW

7.1. By discharging sugar into a public watercourse, the Defendant has violated the Texas Water Code and the Texas Commission on Environmental Quality Industrial Solid Waste and Municipal Hazardous Waste Regulations.

7.2. The Texas Water Code seeks to maintain the quality of water in the State. Tex. Water Code 26.121(a) prohibits the discharge of industrial waste into or adjacent to any water in the state, unless the Texas Commission on Environmental Quality has authorized such discharge. Tex. Water Code 26.001(11) defines “industrial waste” as “waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.”

7.3. Sugar meets the definition of industrial waste. Because the Defendant lacks a permit from the TCEQ to discharge sugar into a public watercourse, the Defendant has violated Tex. Water Code 26.121(a).

7.4. The TCEQ has promulgated administrative rules for handling of industrial solid waste. These rules are found in Title 30 of the Texas Administrative Code Section 335. Harris County alleges that the Defendant has violated 30 Texas Administrative Code Section 335.4(1) which prohibits someone from 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 the waters in the state without obtaining a specific authorization for such a discharge from the Texas Commission on Environmental Quality.

8. INJUNCTIVE RELIEF

- 8.1. Harris County seeks a temporary and permanent injunction compelling the Defendant to:
- 1) Provide annual training (in English and in Spanish, as appropriate to the needs of the workers) to Pullman employees working at 101 E. Barbours Cut Boulevard on

best practices to prevent sugar waste accumulation. Provide proof of this training to Harris County Pollution Control within 30 days from the date of the training;

- 2) Require daily cleaning of sugar waste from the floor, laydown yard, and loading/unloading areas at the Defendant's facility at 101 E. Barbours Cut Boulevard;
- 3) Maintain logs that document the daily cleaning of sugar waste from the floor, laydown yard, and loading/unloading areas;
- 4) Create berms around the Defendant's facility to prevent storm water from the facility from entering public waterways.

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

8.3. 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.

9. ATTORNEY'S FEES AND COSTS

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

10. POST-JUDGMENT INTEREST

10.1. Pursuant to Tex. Fin. Code 304.003, Harris County asks this Court to award Harris County post-judgment interest on all amounts awarded in relation to this proceeding, at the maximum rate allowed by law.

11. PRAYER

11.1. Plaintiff, Harris County, Texas asks this Court:

- (a) That the State of Texas be made a necessary and indispensable party to the suit as required by law;

- (b) 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 violations of the laws of the State of Texas;
- (c) That upon notice and hearing, a temporary injunction be granted against Defendant as requested above;
- (d) That, upon trial, this Court grant a permanent injunction against Defendant, in favor of Plaintiff, for the injunctive relief requested;
- (e) This Court grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

VINCE RYAN
Harris County Attorney

/s/ Clarissa Kay Bauer

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**ATTORNEYS FOR PLAINTIFF
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