

CAUSE NO. _____

THE STATE OF TEXAS
Plaintiff,

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IN THE DISTRICT COURT OF

v.

HARRIS COUNTY, TEXAS

CONCRETE PROS READY MIX, INC.
Defendant.

_____ JUDICIAL DISTRICT

ORIGINAL PETITION FOR ABATEMENT OF COMMON NUISANCE AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

Plaintiff THE STATE OF TEXAS, by and through Harris County Attorney Vince Ryan, complains that Defendant Concrete Pros Ready Mix, Inc. maintains an existing nuisance, and is about to create an expanded and even more pervasive nuisance per its permit application for an additional second onsite concrete batch plant. Concrete batch plants routinely disturb otherwise peaceful neighborhoods and thus pose a significant threat to community well-being. Defendant Concrete Pros is no exception to this vexing problem, which disproportionally impacts underserved communities throughout Harris County.

Plaintiff seeks temporary and permanent injunctive relief to restrain any expansion of the existing nuisance. Expansion poses an imminent and irreparable threat to the well-being of the community of South Acres (area code 77047). Plaintiff State of Texas files this Original Petition for Abatement of Common Nuisance and Application for Temporary and Permanent Injunctive Relief and shows as follows:

I.
Parties

1. Plaintiff is the State of Texas appearing and proceeding by and through Harris County, County Attorney Vince Ryan's Office, in accordance with Tex. Civ. Prac. & Rem. Code § 125.002.

2. Defendant Concrete Pros Ready Mix, Inc. may be served by and through its registered agent Nasser Maaz, 6302 Marina Canyon Way, Katy, Texas, 77450. Alternatively, Defendant may be served wherever its officers, directors, or managing agents may be found.

II.
Discovery Control Plan

3. Plaintiff intends for this case to be governed as Level III Discovery Plan in accordance with Rule 190.4 of the Texas Rules of Civil Procedure.

III.
Jurisdiction and Venue

4. This Court has subject matter jurisdiction based on Tex. Civ. Prac. & Rem. Code Chapter 125 since the property made the basis of this cause is being maintained as a common nuisance in Harris County, Texas. The Court has personal jurisdiction over the Defendant as it is a Texas corporation authorized to do business in this State.

5. The Court has mandatory venue of the suit under Tex. Civ. Prac. & Rem. Code § 125.002(a), which directs venue of an action to enjoin and abate a common nuisance in the county in which it is alleged to exist. Further, Tex. Civ.

Prac. & Rem. Code § 15.016 provides that an action for which venue is made mandatory by a statute shall be brought in the county required under the statute. The real property upon which the Defendant is operating a common nuisance is in Harris County, Texas.

IV.

Basis for Suit: Defendant Maintains a Common Nuisance

6. Tex. Civ. Prac. & Rem. Code § 125.0015(a) provides that “[a] person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerate the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance.”

7. The statute identifies various objectionable activities, including making “an unreasonable noise in a public place ... in or near a private residence that he has no right to occupy.” Tex. Civ. Prac. & Rem. Code § 125.0015(a)(24), citing and incorporating Tex. Pen. Code § 42.01(a)(5).

8. Proof that an activity described by Section 125.0015 is frequently committed at the place involved or that the place is frequently used for an activity described by Section 125.0015 is prima facie evidence that the Defendant knowingly tolerates the activity.

V.

Statement of Facts

9. Residents of South Acres experience numerous issues jeopardizing their health and wellness arising from their proximity to Defendant. Defendant Concrete Pros now seeks to expand its operations and further expand the

nuisance it currently maintains. The State of Texas seeks to enjoin further expansion of such activities.

A. Concrete Pros Moves into South Acres and Creates a Nuisance

10. In December 2015, the Texas Commission on Environmental Quality (TCEQ) issued Standard Permit No. 131789 to Concrete Pros Ready Mix, Inc. to construct and operate a Concrete Batch Plant at 4005 Swingle Road (the “Permitted Property”).

11. The Standard Permit provides the following three relevant terms:

- a. Concrete Pros will work no longer than twenty-four (24) hours a day, seven (7) days a week and fifty-two (52) weeks a year;
- b. Site-wide production rates will not exceed 200 cubic yards per hour, 4,800 per day and 1,752,000 cubic yards per year; and
- c. Operations will take place on the 4.3 acres of the Permitted Property.

B. Now Concrete Pros Seeks to Expand Nuisance in South Acres

12. On December 2, 2019, Concrete Pros Ready Mix, Inc. applied to the TCEQ for a new Air Quality Standard Permit, Registration No. 159333, to authorize the construction and operation of a second plant (Concrete Batch Plant 2) to be located at the existing site at 4005 Swingle Road in Houston, Harris County, Texas.

13. The requested Air Quality Standard Permit for Concrete Batch Plant 2 would authorize an increase of thirty-three percent (33%) in capacity:

- a. Maximum operating for twenty-four (24) hours a day, seven (7) days a week and fifty-two (52) weeks a year;
- b. Site-wide production rates to increase to 300 cubic yards per hour, 7,200 cubic yards per day and 2,628,000 cubic yards per year; and
- c. Operations to take place on the existing 4.3 acres Permitted Property.

14. A thirty-three percent (33%) increase in production is more than a nominal escalation in activity. First, the requested additional batch plant will result in twice as much industrial machinery operating immediately next to a residential area and at all hours of the day. Second, there will be a substantial increase in the number of cement trucks navigating through the residential area of South Acres at all times of day and night. Cement trucks make a substantial amount of noise as they come and go, back up with beepers, and load their vehicles with material. Accordingly, families and school children in South Acres will be subjected to a noticeable escalation of an already existing nuisance unless equitable relief is granted.

15. TCEQ does not evaluate or consider noise when granting an Air Quality Standard Permit for concrete batch plants. Noise generated by batch plants does not enter the equation of the TCEQ permitting process, regardless of protestations by residents adversely impacted by the sound generated from an industrial facility located in the middle of a residential area. As such the State of Texas petitions this Court for injunctive relief pursuant to statutory authority

granted in Tex. Civ. Prac. & Rem. Code § 125.002(a) regarding the singular issue of nuisance.

VI.

Request for Temporary Injunction

16. Plaintiff State of Texas incorporates and adopts by reference the allegations contained in each preceding paragraph. The State seeks to enjoin Concrete Pros from further expansion as detailed in Concrete Pros Air Quality Standard Permit, Registration No. 159333. The State seeks to further enjoin Defendant from taking any additional steps to obtain a permit for the second batch plant in question until final trial on the merits.

17. Defendant refuses to abate the nuisance occurring at 4005 Swingle Road, Houston, Harris County, Texas 77047. Indeed, Defendant seeks to expand the nuisance. Defendant intends to continue to maintain the Property as a common nuisance unless otherwise restrained by an injunctive order of the Court. Defendant knowingly tolerates the nuisance activity and allows such activity to occur habitually on its property.

18. In accordance with Tex. Civ. Prac. & Rem. Code § 125.045(a), after notice and hearing on a request by the State of Texas for a temporary injunction, should a court determine that the petitioner is likely to succeed on the merits in a suit brought under Section 125.002 (Suit to Abate Common Nuisance), the Court shall order reasonable requirements to prevent the use and maintenance of the Defendant's Property as a nuisance and require Defendant to execute a bond.

The State henceforth further seeks a bond payable to the STATE OF TEXAS or Harris County; in the amount set by the Court but no less than \$5,000 nor more than \$10,000; with sufficient sureties approved by the Court; and conditioned such that Defendant will not knowingly allow common nuisances to exist on the Property.

19. Under Tex. Civ. Prac. & Rem. Code § 125.003(a), if the Defendant violates any condition of the bond or any injunctive order by this Court, the State of Texas shall sue on the bond, and upon a showing of a violation of any condition of the bond or injunctive order, the whole sum of the bond plus costs and attorney fees, ordered forfeited to Harris County, Texas; further, Concrete Pros Ready Mix, Inc. and its premises would be ordered closed for one year from the date of the order of bond forfeiture. In addition, the Court may impose the laundry list of sanctions under Section 125.045(b), including cutting off utilities to Concrete Pros Ready Mix, Inc.; revoking the occupancy permit; prohibiting access; limiting hours of operation; ordering termination of the tenant's lease; or any other legal remedy available under the law.

VII.

Request for Permanent Injunctive Relief

20. Under Tex. Civ. Prac. & Rem. Code § 125.002(e), upon final judgment in favor of the State of Texas, Plaintiff prays the Court enter a permanent injunction ordering Defendant to cease from expansion as detailed in Concrete Pros Air Quality Standard Permit, Registration No. 159333, and be

enjoined from maintaining or participating in the common nuisance existing on the Property.

21. In accordance with Section 125.002(d), a person who violates a temporary or permanent injunctive order is subject to the following sentences for civil contempt:

- a. Fine of no less than \$1,000 or more than \$10,000.
- b. Confinement in jail for a term of no less than 10 or more than 30 days.
- c. Both a fine and confinement.

22. If final judgment favors the State of Texas, the Court shall grant a permanent injunction ordering Defendant to abate the nuisance and/or be forever enjoined from maintaining or participating in the common nuisance existing on the Property. The Court may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance.

VIII.
Attorney's Fees

23. Pursuant to Tex. Civ. Prac. & Rem. Code § 125.003, Plaintiff requests the Defendant be ordered to pay reasonable attorney's fees and costs, including investigative costs, witness fees, court costs, and deposition fees.

IX.
Verification

24. Pursuant to Tex. Civ. Prac. & Rem. Code § 125.002, Plaintiff is not required to verify the allegations set forth in this Petition or show any proof of

personal injury by the acts complained herein.

X.
Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff State of Texas prays this Court grant judgment in favor of Plaintiff for temporary and permanent injunction and other such relief and issue judgment in rem against Defendant, Concrete Pros Ready Mix, Inc., ordering the Property closed for one year. Further, Plaintiff prays for their costs of court, reasonable attorney's fees, investigative costs, witness fees, and such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

VINCE RYAN 99999939
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