

authorized through a formal order of its governing body, the Commissioners Court of Harris County, Texas approved on April 30, 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.

3. PLAINTIFFS

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 Texas Water Code.¹

4. DEFENDANT

4.1. Exxon Mobil Chemical is a New Jersey Corporation that does business in Harris County, Texas. It may be served with citation by serving its Registered Agent, Corporation Service Company d/b/a CSC-Lawyers Incorporated at 211 East 7th Street, Suite 620, Austin, Texas 78701, or wherever it may be found.

4.2. Exxon owns and operates a chemical manufacturing plant at 3525 Decker Drive, Baytown, Texas 77520 (Facility).

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 Chapter 382 of the Texas Health and Safety Code and the

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).

Commission rules promulgated thereunder, and Chapter 7 of the Texas Water Code, 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(c).

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. 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

Outdoor Burning Generally Prohibited

6.6. Section 111.201 of Title 30 of the TAC states that “no person may cause, suffer, allow, or permit any outdoor burning within the State of Texas except as provided by [Subchapter B of Chapter 111: Outdoor Burning] or by orders or permits of the Commission.” 30 Tex. Admin. Code § 111.201 (West 2017).

New Source Review Permits

6.7. TCEQ rules require, before any actual work is begun on a facility, a person who plans to construct a new facility or engage in the modification of an existing facility which may emit air contaminants into the air to either: (1) obtain a permit under 30 Tex. Admin. Code § 116.111,² (2) satisfy the conditions for a standard permit,³ (3) satisfy the conditions for a flexible permit,⁴ (4) satisfy the conditions for facilities permitted by rule,⁵ or (5) satisfy the criteria for a

² Control of Air Pollution by Permits for New Construction or Modification.

³ 30 T.A.C. §§ 116.601 – 116.620.

⁴ *Id.* at §§ 116.710 - 116.765.

⁵ *Id.* at § 106.

de minimis facility.⁶ *Id.* at § 116.110(a).

General and Special Conditions

6.8. “Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the Commission issued in conformity with the Clean Air Act and the conditions precedent to the granting of the permit.” 30 Tex. Admin. Code § 116.115(b)(2)(H)(i).

Regulatory Nuisance or Creating Air Pollution

6.9. 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.

ENFORCEMENT UNDER TEXAS WATER CODE CHAPTER 7

6.10. “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.

6.11. 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 *Id.* at § 116.119.

6.12. 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.

6.13. 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.

7. VIOLATIONS

7.1. On July 31, 2019, there was a fire in the Olefins Plant at the ExxonMobil Chemical Facility that resulted in unauthorized emissions into the atmosphere. The Harris County Pollution Control Services Department (HCPCSD) conducted an emissions event investigation in response to the emissions event. The fire resulted in the emission of multiple air pollutants, including propylene, LPG, propane and associated products of combustion.

7.2. The investigation into the July 31, 2019 emissions event concluded there have been violations of several Clean Air Act provisions.

8. DEFENDANT'S VIOLATIONS OF THE TEXAS CLEAN AIR ACT AND TEXAS WATER CODE

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

8.1. Defendant violated Texas Water Code § 7.101 and Texas Health and Safety Code § 382.085(b) by emitting air contaminants into the atmosphere without authorization on July 31, 2019. Each air contaminant, each emission point and each day are separate violations.

8.2. Defendant violated Tex. Water Code § 7.101 and 30 Tex. Admin. Code § 116.115(b)(2)(H)(i) by failing to comply with all rules, regulations, and orders of the Commission as required by its air permit on July 31, 2019.

9. TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

9.1. As shown above, Defendant ExxonMobil Chemical violated provisions of the Texas Clean Air Act, Texas Water Code, and Texas Administrative Code on at least July 31, 2019.

9.2. Therefore, Harris County seeks a temporary restraining order and a temporary injunction ordering Defendant ExxonMobil Chemical to comply with the Texas Clean Air Act, Texas Water Code, and Texas Administrative Code.

9.3. Harris County requests a temporary restraining order (TRO) against the Defendant Exxon Mobil Chemical, ordering the Defendant, its agents, officers, directors, servants, and employees, and all other persons who receive actual notice of this Injunction to be enjoined as follows:

9.4. As used in this Temporary Restraining Order and Injunction, the following words and terms set forth below have the following meanings:

- a) "Defendant" shall mean ExxonMobil Chemical.
- 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) "Facility" shall mean the real property located at 3525 Decker Drive, Baytown, Texas 77520.

9.5. 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, without bond or other undertaking, any 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 violation of the Texas Clean Air Act and the regulations promulgated thereunder.

9.6. Plaintiff also seeks temporary injunctive relief to ensure there are no future emissions and further violations of the Texas Clean Air Act or the Texas Water Code committed by Defendant.

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

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

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

10.1. 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.

H. PRAYER

11.1. 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 Court, after notice to the Defendant, conduct a hearing on Harris County's application for a temporary restraining order;
- (c) That the State of Texas be made a necessary and indispensable party to the suit as required by law;

- (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 final trial in this cause, the Court grant Harris County its reasonable attorney's fees and that all costs be assessed against Defendant; and
- (h) 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: /s/ Rock W.A. Owens
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**

AFFIDAVIT

STATE OF TEXAS §
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COUNTY OF HARRIS §

Before me, the undersigned notary, on this day personally appeared Rock Owens, a person whose identity is known to me. After I administered an oath to him, upon his oath he said:

“My name is Rock Owens, I am over the age of twenty-one years, of sound mind, and am capable of making this Affidavit. I am personally acquainted with the facts herein.

I have read the foregoing Harris County’s Original Petition and Application for Temporary Restraining Order and Temporary and Permanent Injunctions in *Harris County, Texas and the State of Texas v. ExxonMobil Chemical Company* and am familiar with the facts alleged. The facts alleged are true and correct.”



Rock W. A. Owens

SUBSCRIBED AND SWORN TO before me on August 1, 2019, to certify which witness my hand and official seal.



NOTARY PUBLIC, in and for the
STATE OF TEXAS

