

CAUSE NO. _____

HARRIS COUNTY, TEXAS,
Plaintiff,

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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.

HOUSTON REFINING LP
Defendant.

____ JUDICIAL DISTRICT

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

Plaintiff, Harris County, Texas, files this Original Petition and Application for Temporary and Permanent Injunctions in this environmental enforcement action complaining that Houston Refining LP (“Houston Refining”) caused, suffered, allowed, or permitted air emissions in Harris County in violation of the Texas Clean Air Act. Plaintiff seeks injunctive relief, court 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. 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 approved on September 10, 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. Houston Refining LP is a Delaware Limited Partnership that does business in Harris County, Texas. It may be served with citation by serving its Registered Agent, C T Corporation Service Company at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136, or wherever it may be found.

4.2. Houston Refining LP owns and operates a chemical manufacturing plant at 12000 Lawndale Street, Houston, Texas 77017 (“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 Commission rules promulgated thereunder, and Chapter 7 of the Texas Water Code, and all of 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).

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

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 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

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.

⁶ *Id.* at § 116.119.

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).

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 of the Texas Water Code and Chapter 382 of the Texas Health and Safety Code, and Commission rules and orders promulgated under these statutes. *Id.* at §§ 7.105, 7.351.

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 September 3, 2019, Houston Refining experienced a power interruption at its plant located at 12000 Lawndale Street, Houston, Texas 77017 that resulted in the unauthorized emissions of sulfur dioxide and hydrogen sulfide into the atmosphere. Houston Refining has a permit that allows emission limits for hydrogen sulfide and sulfur dioxide, Permit Number 2167.

7.2. Based on Houston Refining’s emission event report, 323,382 pounds of sulfur dioxide were released. Houston Refining’s permit only allows a maximum of 1,304.29 pounds of sulfur dioxide to be released. In addition to the sulfur dioxide, 3,797 pounds of hydrogen sulfide

were released. Houston Refining's permit only allows a maximum of 19.67 pounds of hydrogen sulfide to be released.

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 September 3, 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 September 3, 2019.

9. TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

9.1. As shown above, Defendant Houston Refining violated provisions of the Texas Clean Air Act, Texas Water Code, and Texas Administrative Code on at least September 3, 2019.

9.2. Therefore, Harris County seeks a temporary injunction ordering Defendant Houston Refining to comply with the Texas Clean Air Act, Texas Water Code, and Texas Administrative Code and to ensure there are no future emissions and further violations of the Texas Clean Air Act or the Texas Water Code committed by Defendant.

9.3. Harris County is entitled to 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.

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

9.5. 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.

11. 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 State of Texas be made a necessary and indispensable party to the suit as required by law;
- (c) 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;
- (d) That citation issue in due form of law against Defendant;
- (e) That upon final trial a permanent injunction should issue against Defendants, in favor of Plaintiff, for the injunctive relief as aforesaid;

- (f) 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
- (g) 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/ Bethany Dwyer
Bethany Dwyer
State Bar No. 24084190
Assistant County Attorney
Environmental Practice Group
1019 Congress, 15th Floor
Houston, Texas 77002
Telephone: (713) 274-5338
Facsimile: (713) 437-4211
Email: Bethany.Dwyer@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 September 12, 2019

Certified Document Number: 87101073 Total Pages: 8

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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