

CAUSE NO. \_\_\_\_\_

**HARRIS COUNTY, TEXAS,  
Plaintiff,**

and the

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

v.

**MRH CLEARING, INC. AND  
MATTHEW R. HUGHES  
Defendants.**

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

\_\_\_\_ **JUDICIAL DISTRICT**

**HARRIS COUNTY’S ORIGINAL PETITION AND  
APPLICATION FOR PERMANENT INJUNCTION**

Plaintiff, Harris County, Texas, files this Original Petition and Application for Permanent Injunction. This is an environmental enforcement case in which Harris County alleges MRH Clearing, Inc. and Matthew R. Hughes illegally disposed of municipal solid waste, conducted illegal outdoor burning, and improperly operated an air curtain incinerator during land clearing operations, resulting in multiple days of violations of the Texas Solid Waste Disposal Act, the Texas Clean Air Act, and TCEQ regulations. Despite Harris County’s attempts to educate the Defendants regarding the requirements of Texas law, they have been in violation of the law for years and appears unlikely to voluntarily comply.

**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. Plaintiff seeks civil penalties over \$100,000.00 but not more than \$250,000.00, plus injunctive relief, court costs, and attorney’s fees. The penalties sought are within the

jurisdictional limits of the court.

## **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.

2.2. Harris County brings this cause of action on its own behalf and on behalf of the residents of Harris County, Texas, for injunctive relief and civil penalties under the authority granted in §§ 7.102 and 7.351(a) of the Texas Water Code.

## **3. PARTIES**

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

3.2. 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 § 7.353 of the Texas Water Code. Service on the State is not necessary at this time.

3.3. MRH Clearing, Inc. (MRH) is a Texas corporation that does business in Harris County, Texas. It may be served with citation by serving its registered agent, Matthew R. Hughes at 11402 Birchwood Drive, Humble, Texas 77338-2519, or wherever they may be found.

3.4. Matthew R. Hughes (Hughes) is an individual residing in Harris County, Texas. Hughes is president and director of MRH Clearing, Inc. He may be served with citation at 11402 Birchwood Drive, Humble, Texas 77338-2519, or wherever he may be found.

## **4. JURISDICTION AND VENUE**

4.1. The 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 because all violations occurred in Harris County.

*See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) and Tex. Water Code § 7.105(c).

## 5. FACTS

5.1. For years, the Defendants have illegally disposed of land clearing waste by burning the waste. Sometimes the Defendants use air curtain incinerators (ACIs) as part of their land clearing business. ACIs operate by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. The TCEQ regulates ACIs.

5.2. On March 1, 2016, Harris County investigated Defendants' land clearing operations at a construction site located at 0 Highway 90 (HCAD parcel number 1326990010001). Harris County investigator Christopher Montague discovered that the Defendants were burning tree debris.

5.3. On April 13, 2017, Harris County investigated Defendants' operations at a construction site in the 300 to 400 block of Moonshine Hill Loop (HCAD parcel numbers 0441600000080 and 0441600000105). Investigator Cecilia Askins discovered the Defendants were illegally burning land clearing waste, as well as construction and demolition waste.

5.4. On February 6, 2018, Harris County investigated Defendants' operations at the same construction site in the 300 to 400 block of Moonshine Hill Loop (HCAD parcel numbers 0441600000080 and 0441600000105) as the April 13, 2017 violation, Investigator Cecilia Askins discovered the Defendants continued to illegally burning waste, despite past efforts to educate them regarding Texas law. She also discovered the Defendants had dumped a massive amount of land clearing waste (over 1000 cubic yards) on the property, in violation of Texas law regulating the disposal of municipal solid waste.

5.5. On November 12, 2018, in response to a citizen complaint - Harris County investigated Defendants' operations at a construction site at 6627 FM 1960 West, Houston, Texas.

Investigator Israel Garza discovered an improperly operated air curtain incinerator, emitting a massive amount of smoke and ash that blew into a neighboring property.

5.6. On November 26, 2018, Harris County again investigated Defendants' operations at the 6627 FM 1960 West property and found that the Defendants continued to break the law. Israel Garza discovered multiple violations of TCEQ regulations, including:

Vegetative material stacked above the air curtain.

Copious amounts of smoke emanating from the ACI operating pit and entering a neighboring property for an extended duration of time.

Two piles of vegetative material being burned without the use of an ACI.

5.7. On December 12, 2018, Harris County investigated Defendants' operations at 12827 Shiloh Church Road. Investigator Norwood Clayton discovered that the Defendants were conducting illegal outdoor burning.

5.8. On December 25, 2018, Harris County again investigated Defendants' operations at 6627 FM 1960 West, Houston, Texas and found that they continued to illegally burn vegetative material.

## **6. APPLICABLE LAW**

### **THE TEXAS CLEAN AIR ACT**

#### **A. The Texas Health and Safety Code**

6.1. Chapter 382 of the Texas Health and Safety Code contains the Texas Clean Air Act. The purpose of the 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.

6.2. Except as authorized by a Commission rule or order, the Texas 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. Tex. Health & Safety Code Ann. § 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. Tex. Health & Safety Code Ann. § 382.085(b).

### **B. The Texas Administrative Code**

6.3. The Texas Clean Air Act authorizes the TCEQ to adopt rules to carry out the intent and purposes of the Act. *Id.* at § 382.017. The TCEQ has promulgated rules based on that authority. These rules are found in Title 30 of the Texas Administrative Code. 30 Tex.Adm.Code 106.496 sets out the rules for air curtain incinerators.

6.4. Harris County believes that Defendants have operated ACIs in violation of the following Texas Administrative Code provisions:

- 30 TAC 101.4 Nuisance odor rule.
- 30 TAC § 111.201 Prohibition against outdoor burning.
- 30 TAC § 106.496(c)(3)(C) Prohibition on material stacked above the air curtain.
- 30 TAC § 106.496(c)(3)(D) Requirement that an operator remain with the ACI at all times when it is operating.
- 30 TAC § 106.496(c)(4)(B) Best management practices to minimize airborne smoke and ash.
- 30 TAC § 106.496(f)(1)(B) Removal of ash to minimize it becoming airborne.
- 30 TAC § 106.496(f)(1)(C) Material removed from ACI must be properly

extinguished.

### **C. Municipal Solid Waste**

6.5. The TCEQ has promulgated rules for the handling of municipal solid waste. These rules are found in Title 30 of the Texas Administrative Code. 30 Tex.Adm.Code 330.15(c) prohibits a person from causing, suffering, allowing, or permitting the dumping or disposal of municipal solid waste without written authorization of the TCEQ.

### **7. CIVIL PENALTIES**

7.1. A person who violates the Texas Water Code, Texas Health and Safety Code, or a Commission permit, rule, or order, is liable for a civil penalty of not less than \$50 nor more than \$25,000 for each day of each violation. Tex. Water Code § 7.102. Upon final trial of this cause, an appropriate civil penalty within the range specified by law should be assessed against the Defendants.

### **8. INJUNCTIVE RELIEF**

8.1. Upon final trial, Harris County seeks a permanent injunction compelling Defendants to:

- Comply with the Texas Clean Air Act and all TCEQ rules.
- Comply with the Solid Waste Disposal Act and all TCEQ rules.
- Properly maintain all ACIs that they use in Harris County, in accordance with manufacturer's recommendations.
- Keep paperwork on the ACI maintenance for a period of five years from the date of maintenance.
- Provide yearly training to their employees in proper operation of ACIs and document this training, including name of instructor, name of attendees, and information presented.

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 Defendants, as authorized by Tex. Water Code § 7.108 and Tex. Gov't Code § 402.006(c).

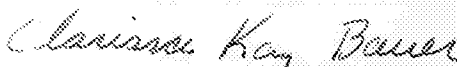
### **10. PRAYER**

10.1. 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, upon trial, this Court grant a permanent injunction against Defendants, in favor of Plaintiff, for injunctive relief;
- c) That, upon trial, this Court grant civil penalties against Defendants, within the range allowed by law, as requested above;
- d) That, upon trial, this Court grant Harris County its reasonable attorney's fees and that all costs be assessed against Defendants, plus interest at the legal rate from the date of judgment until fully paid; and
- e) This Court grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

VINCE RYAN  
Harris County Attorney



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**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 January 31, 2020

Certified Document Number: 89189662 Total Pages: 8

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

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