

2. AUTHORITY TO SUE

2.1. Plaintiff, Harris County, Texas, 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. Tex. Water Code §§ 7.105 and 7.351(a).

3. PLAINTIFF

3.1. Plaintiff Harris County, Texas 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 action. Tex. Water Code § 7.353.

4. DEFENDANT

4.1. Sesco Cement, Corp. (Sesco or Defendant) is a domestic for-profit corporation. It may be served with citation by serving its Registered Agent, Davenport Law Firm, P.C., at 2009 Lubbock Street, Houston, Texas 77007.

5. JURISDICTION AND VENUE

5.1. This Court has jurisdiction over this case and venue is proper in Harris County because Harris County is the County in which all violations occurred and this is an action to enforce Chapters 361 and 382 of the Texas Health and Safety Code, Chapter 26 of the Texas Water Code and the rules promulgated thereunder. Tex. Civ. Prac. & Rem. Code §§ 15.002(a)(1); Tex. Water Code §§ 7.105, 7.351.

6. APPLICABLE LAW

THE TEXAS CLEAN AIR ACT

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 § 382.002. The Clean Air Act authorizes the TCEQ to adopt rules to carry out the intent and purposes of the act and TCEQ has promulgated rules based on that authority. Tex. Health & Safety Code § 382.051-.05102, 382.017.

6.2. Facility Investigations. A local government may enter public or private property at a reasonable time to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere. Tex. Health & Safety Code §§ 382.111 and 382.015.

6.3. Emission Events. As soon as practicable, but not later than 24 hours after the discovery of an emission event, the owner or operator of a regulated entity shall determine if the event is a reportable emissions event and notify the local air pollution control agencies with jurisdiction if the emissions event is reportable. 30 Tex. Admin. Code § 101.201(a).

6.4. Pollution Capture Equipment. All pollution emission capture equipment and abatement equipment must be maintained in good working order and operated properly during facility operations. Emission capture and abatement equipment must be considered to be in good working order and operated properly when operated in a manner such that each facility is operating within authorized emission limitations. 30 Tex. Admin. Code § 101.221(a).

6.5. Authorization to Construct Required. 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) satisfy the conditions for a standard permit, (3) satisfy the conditions for a flexible permit, (4) satisfy the conditions for facilities permitted by rule, or (5) satisfy the criteria for a de minimis facility. 30 Tex. Admin. Code § 116.110(a).

6.6. Permits by Rule. The Commission allows “certain types of facilities or changes within facilities which the commission has determined will not make a significant contribution of air contaminants to the atmosphere” to obtain a permit by rule. 30 Tex. Admin. Code § 106.1. The requirements to obtain a permit by rule are described in Chapter 106 of Title 30 of the Texas Administrative Code.

6.7. Bulk Material Handling Permit by Rule. Bulk material product handling facilities that operate in compliance with 30 Tex. Admin. Code § 106.144 are permitted by rule. The following are some of the requirements listed in Section 106.144:

- (1) All material shall be transported in a closed conveying system and all exhaust air to the atmosphere shall be vented through a fabric filter having a maximum filtering velocity of 4.0 feet per minute (ft/min) with mechanical cleaning or 7.0 ft/min with automatic air cleaning. 30 Tex. Admin. Code § 106.144(1).
- (2) All permanent in-plant roads and vehicle work areas shall be watered, treated with dust suppressant chemicals, oiled, or paved and cleaned as necessary to achieve maximum control of dust emissions. 30 Tex. Admin. Code § 106.144(2).

- (3) Before any construction begins, written approval must be received from the executive director, and the facility shall be registered with the TCEQ using Form PI-7. 30 Tex. Admin. Code § 106.144(4).

6.8. Records. Owners or operators authorized to operate under a permit by rule must keep records to demonstrate compliance with 30 Tex. Admin. Code § 106.4 and all applicable permit by rule conditions. 30 Tex. Admin. Code § 106.8(c).

6.9. Registration of Emissions. An owner or operator may certify and register the maximum emission rates from facilities permitted by rule under this Chapter in order to establish federally-enforceable allowable emission rates which are below the emission limitations in § 106.4 of this title (relating to Requirements for Permitting by Rule). 30 Tex. Admin. Code § 106.6(a).

6.10. It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless the certified registration is first revised. 30 Tex. Admin. Code § 106.106(c).

TEXAS SOLID WASTE DISPOSAL ACT

6.11. Purpose and Authority. The Texas Solid Waste Disposal Act (“the Solid Waste Disposal Act”) is found in Chapter 361 of the Texas Health and Safety Code. The purpose of the Solid Waste Disposal Act is “to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated.” Tex. Health & Safety Code § 361.002. The Solid Waste Disposal Act authorizes the TCEQ to adopt rules to carry out the intent and purposes of the Act. Tex. Health & Safety Code §§ 361.011 and 361.024.

6.12. Facility Investigations. Local governments have the right to enter, at any reasonable time, public or private property in the governmental entity's jurisdiction to inspect and investigate conditions concerning solid waste management and control. Tex. Health & Safety Code § 361.032.

6.13. Unauthorized Storage or Disposal of Solid Waste. A person¹ may not cause, suffer, allow, or permit "any activity of storage, processing, removal, or disposal² of any solid waste unless such activity is authorized by a permit or other authorization of the Commission." 30 Tex. Admin. Code § 330.7(a).

6.14. "A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste (MSW) . . . or in such a manner that causes (1) the discharge or imminent threat of discharge of MSW into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the commission. . . ." 30 Tex. Admin. Code § 330.15(a).

6.15. "A person may not cause, suffer, allow, or permit the dumping or disposal of MSW without the written authorization of the commission." 30 Tex. Admin. Code § 330.15(c).

6.16. No person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste in such a manner so as to cause the discharge or imminent threat of discharge of industrial solid waste into or adjacent to waters in the state without

¹ "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity. Tex. Health & Safety Code § 361.003 (23).

² "Disposal" means "the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface or groundwater, or introduced into the environment in any other manner." Tex. Health & Safety Code § 361.003 (7).

obtaining specific authorization for such as discharge from the Commission. 30 Tex. Admin. Code § 335.4(1).

THE TEXAS WATER CODE

6.17. Purpose. The purpose of Chapter 26 of the Texas Water Code is “to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state; to encourage and promote the development and use of regional and area wide waste collection, treatment, and disposal systems to serve the waste disposal needs to the citizens of the state; and to require the use of all reasonable methods to implement this policy. Tex. Water Code § 26.003.

6.18. Chapter 26 of the Texas Water Code states that “the Commission shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter.” The Texas Water Code also provides that waste discharges are subject to Commission rules adopted or issued in the public interest. Tex. Water Code § 26.011.

6.19. Facility Investigations. A local government is entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating water quality. Tex. Water Code §§ 26.173, 26.014.

6.20. Unauthorized Discharges. No person may discharge industrial waste into or adjacent to any water in the state. Tex. Water Code § 26.121(a)(1).

6.21. No person may cause, suffer, allow or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any permit or order of the Commission. Tex. Water Code § 26.121(c).

6.22. Multi-Sector General Permit. On July 13, 2016, the Commission issued TPDES General Permit No. TXR050000 (TPDES Permit No. TXR050000) that allows certain industrial facilities to discharge surface water in the state in accordance with certain effluent limitations, monitoring requirements, and other conditions set forth in the permit.

6.23. TXR050000 Notice of Intent. To obtain coverage under TXR050000, an applicant must submit a Notice of Intent (NOI) to the TCEQ that includes the primary SIC Code that best describes the industrial activity of the facility and any other SIC Code or Industrial Activity Codes that describe additional activities that are listed in the permit. TPDES Permit No. TXR050000, Part II, Section C.5.b.6.

6.24. If a facility has additional activities described by a secondary SIC Code that is listed in Part II, Section A.1.b, then the additional activities are described as co-located industrial activities. TPDES Permit No. TXR050000, Part II, Section A.3.

6.25. TXR050000 Training Requirements. Training must be provided to all employees responsible for implementing or maintaining activities identified in the stormwater pollution prevention plan (SWP3). Training must be conducted at least once per year and records of training and attendance must be maintained in the SWP3. TPDES Permit No. TXR050000, Part III, Section A.4.f.

6.26. TXR050000 Routine Facility Inspections. Qualified personnel, who are familiar with the industrial activities performed at the facility, shall conduct routine facility inspections to determine the effectiveness of the Pollution Presentation Measures and Controls. Inspections must be conducted at least once per quarter. TPDES Permit No. TXR050000, Part III, Section B.2.

6.27. TXR050000 Visual Inspections. Stormwater discharges from each outfall authored by TXR050000 must be visually examined on a quarterly basis. TPDES Permit No. TXR050000, Part III, Section B.3.

6.28. TXR050000 Site Compliance Inspection. The comprehensive site compliance inspection is a required site evaluation and an overall assessment of the effectiveness of the current SWP3. This inspection is in addition to other routine inspections required by TXR050000. TPDES Permit No. TXR050000, Part III, Section B.5.

ENFORCEMENT

6.29. Violation of a statute, rule, order or permit is prohibited. 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.

6.30. A "person" includes "corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity." Tex. Gov't Code § 311.005(2).

6.31. Injunctive Relief. Harris County is authorized to file suit for injunctive relief for violations of Chapters 7 and 26 of the Texas Water Code, Chapters 361 and 382 of the Texas Health and Safety Code and Commission rules promulgated under these statutes. Tex. Water Code § 7.105, 7.351.

6.32. Filing Fees and Bond. 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; Tex. Water Code § 7.032 and § 7.351.

7. BACKGROUND AND INVESTIGATIONS

A. Site Description and Background

7.1. Defendant Sesco owns and operates a cement packaging and distribution facility located at 8510 E. Sam Houston Parkway, Houston, Harris County, Texas 77044 (the Facility).

7.2. On August 2, 2017, Defendant submitted a NOI to the TCEQ to operate under TPDES Permit No. TXR050000 and was assigned Permit No. TXR05D098. The NOI specified that the Facility's Primary SIC Code is 4225 (General Warehousing and Storage), Sector P.

7.3. On June 6, 2014, Defendant submitted a PI-7 form to the TCEQ to operate under 30 Texas Administrative Code § 106.144, which subject to certain requirements, authorizes the operation of facilities that handle bulk material product.

7.4. Due to the number of complaints, severity and on-going nature of the violations, the Harris County Pollution Control Services Department (PCS) has conducted nine investigations at the Facility since the beginning of the year.

B. Harris County Pollution Control Services Department Investigations

January 28, 2019 Investigation

7.5. On January 28, 2019, a PCS investigator attempted to conduct an investigation in response to a complaint that trucks exiting the Facility were tracking cement dust on the service road. The investigator arrived at the Facility in a PCS vehicle and provided Defendant's employees with a business card and a copy of Texas Water Code § 26.173. The investigator was denied entry to the Facility.

7.6. While not allowed to access and inspect the Facility, the PCS investigator inspected the right-of-way, storm drains, and took pictures into the Facility from the roadway. The investigator observed white dust from the Facility driveway tracking onto Beltway 8, dust clouds

emanating from the Facility onto the right-of-way and vegetation in the right-of-way covered in dust. At the Facility registered outfall, the investigator observed dust, silt, and what appeared to be concrete.

January 29, 2019 Investigation

7.7. On January 29, 2019, PCS investigators returned to the Facility and conducted an investigation. The investigator observed following:

- (1) three warehouses used to store broken super sacks containing cement powder stacked on top of one another;
- (2) thick layers of cement powder on the ground throughout the Facility;
- (3) trucks driving on inches of concrete powder on the ground both inside and outside of the warehouses;
- (4) cement dust covering Facility equipment and vehicles;
- (5) cement dust on the driveway, tracking onto the Beltway 8 frontage road, and cement dust in the Beltway 8 right-of-way ditches; and
- (6) cement powder mixed with water had hardened inside of the Facility storm drains.

7.8. When requested by the PCS investigator, Defendant had no records of sweeping, watering or any other manner of dust control.

June 13, 2019 Investigation

7.9. On June 13, 2019, a PCS investigator conducted a follow-up investigation of the Facility and observed the following:

- (1) approximately two inches of cement powder on the ground inside the Facility and on the in-plant roads;

- (2) cement waste on the driveway entrance to the Facility, in the grass along the right-of-way, and in the storm drains along E. Sam Houston Parkway; and
- (3) trucks dragging cement powder onto Beltway 8 frontage road.

7.10. During the investigation, the Defendant was filling a tanker truck with cement powder. During the filling process, the investigator observed leaks and fugitive emissions at the discharge point at the top of the truck (at the point the flexible tubing enters the truck), fugitive emissions coming from the piping close to the ground during the filling operations, and observed a pile of cement powder approximately a foot deep at the base of the silo. The investigator observed a large plume of cement dust from a telescopic discharge point while a silo was filling a dry cargo bulk tanker. To date, this event has not been reported to PCS or through STEERS, nor has Defendant submitted any documentation to PCS evidencing they calculated the quantity of emissions.

7.11. During the investigation, the investigator requested documentation of the Facility's compliance with 30 Tex. Admin. Code §§ 106.4 and 106.8(c). To date, Defendant has failed to provide the requested documentation.

June 18, 2019 Investigation

7.12. On June 18, 2019, a PCS investigator conducted a complaint investigation at the Facility upon receipt of several complaints about Facility's cement dust regularly blowing offsite. During the investigation, the PCS investigator observed the following:

- (1) cement waste had accumulated on driveway entrances to the Facility and a heavy trail of the cement waste tracked onto the Beltway 8 frontage road;
- (2) cement waste in the storms drains along the frontage road to the north and south of the Facility;

(3) cement waste had accumulation throughout the entire Facility, in some cases inches thick; and

(4) vehicle rinsing occurring near the Facility storm drains.

7.13. During the investigation, the investigator requested documentation of the Facility's compliance with 30 Tex. Admin. Code §§ 106.4 and 106.8(c). To date, Defendant has failed to provide the requested documentation.

July 24, 2019 Investigation

7.14. On July 24, 2019, a PCS investigator conducted a complaint investigation at the Facility upon receipt of a complaint that cement dust from the Facility was affecting nearby roads and passing vehicles. During the investigation, the investigator observed the following:

- (1) a cloud of white cement dust was being carried offsite by vehicles entering and exiting the Facility;
- (2) a warehouse used to store thousands of broken super sacks containing cement powder stacked on top of one another;
- (3) a thick layer of cement powder throughout the floor of the warehouse in varying depths;
- (4) a trail of the cement waste from the Facility onto the frontage road;
- (5) the onsite dumpster was overflowing and pile of waste approximately 10-12 cubic yards in height was on the ground containing hardened concrete, super sacks, cardboard, wooden pallets, and rubber tubing;
- (6) forklifts entering and exiting the warehouse causing cement powder to become airborne as they moved throughout the Facility; and

- (7) several piles of hardened concrete that were approximately thousands of tons in volume.

7.15. After the inspection, the investigator discussed the violations with an individual employed by Defendant as a manager at the Facility. During the discussion, the Facility manager stated that two silos and three hoppers existed on the Property. A record review determined that the two silos and three hoppers were not represented in Defendant's Form PI-7 application to operate under 30 Tex. Admin. Code § 106.144.

7.16. As in previous investigations, the investigator requested documentation of the Facility's compliance with 30 Tex. Admin. Code §§ 106.4 and 106.8(c). To date, Defendant has failed to provide the requested documentation.

August 14, 2019 Investigation

7.17. On August 14, 2019, a PCS investigator conducted a comprehensive industrial storm water inspection. The investigator observed hundreds of empty super sacks containing residual cement powder discarded on the ground throughout the Facility. The investigator determined that the residual cement powder was being allowed to spread throughout the Facility, be carried offsite, and enter the storm drains.

7.18. The investigator also made the following determinations:

- (1) An annual comprehensive site compliance evaluation was not conducted in 2017 and 2018;
- (2) Annual employee training was not conducted in 2017 and 2018;
- (3) Quarterly routine facility inspections were not completed for all four quarters of 2017, all four quarters of 2018, and the first quarter of 2019; and

- (4) Quarterly visual monitoring was not completed for all four quarters of 2017, all four quarters of 2018, and the first quarter of 2019.

August 23, 2019 Investigation

7.19. On August 23, 2019, PCS received four separate complaints about the Facility. Complaints about the Facility include dust emissions impairing visibility while driving, dust covering vehicles, and dust affecting vehicle air filters. A PCS investigator conducted an investigation of the Facility and made the following observations that were similar to earlier investigations:

- (1) Cement particulate matter, in varying amounts, remained spread throughout the Facility;
- (2) Two silos and two hoppers, that were not included in the Form PI-7 application to operate under 30 Tex. Admin. Code § 106.144, remained on the Property;
- (3) Cement particulate matter accumulated in the driveways, along the Beltway 8 right-of-way ditches, and tracked onto the frontage road; and
- (4) A dust clouds was observed coming from the silos on the south side of the plant, apparently due to an employee using an air compressor to dust off his vehicle. The presence of a pile of waste containing torn bags and cement particulate matter approximately 350 feet in length, 45 feet in width, and 5 feet in height.

7.20. As with all previous investigations, the investigator requested documentation of the Facility's compliance with 30 Tex. Admin. Code §§ 106.4 and 106.8(c). To date, Defendant has failed to provide the requested documentation.

October 4, 2019 Investigation

7.21. On October 4, 2019, PCS conducted a follow-up inspection of the Facility. During the inspection, the investigator observed the following:

- (1) Cement particular matter, in varying degrees of thickness, on the ground and in the warehouses throughout the Facility (one foot in some places);
- (2) Cement particular matter on the driveways, tracked onto the frontage road and in the right-of-way;
- (3) Dust plumes being created from Facility operations;
- (4) Cement dust in the storm drains;
- (5) Several piles of cement dust, the largest of which measured approximately 350 foot long, 45 feet wide and 8 feet tall, in the middle of the Facility;
- (6) Additional broken cement super sacks strewn throughout the Facility;
- (7) Two silos and three hoppers, that were not included in the Form PI-7 application to operate under 30 Tex. Admin. Code § 106.144, remained on the Property; and
- (8) Particulate matter releasing from one of the silo intake valves, which appeared to be an emissions event.

7.22. To date, the observed emissions event has not been reported to PCS or through STEERS nor has Defendant submitted any documentation to PCS evidencing they calculated the quantity of emissions.

7.23. As in previous investigations, the investigator requested documentation of the Facility's compliance with 30 Tex. Admin. Code §§ 106.4 and 106.8(c). To date, Defendant has failed to provide the requested documentation.

October 16, 2019 Investigation

7.24. On October 16, 2019, PCS conducted a wet weather screening inspection of the Facility. During the inspection, the investigator observed a discharge from Outfall 001. Sample results from the discharge indicated the effluent had a pH of 11.6.

8. DEFENDANT'S VIOLATIONS

8.1. As stated above, Defendant Sesco Cement owns and operates the Facility.

8.2. Failure to Allow Facility Inspection. Defendant violated Texas Health and Safety Code §§ 361.032, 382.111(a) and Texas Water Code § 26.173 on January 28, 2019 by preventing a PCS investigator from conducting an investigation at the Facility.

8.3. Emissions Event. Defendant violated 30 Texas Administrative Code § 101.201(a) on June 13 and October 4, 2019 by failing to determine, within 24 hours after the discovery of an emission event, if the emissions event is a reportable emissions event and if so, report the emissions event to PCS. Specifically, on June 13, 2019, PCS observed the discharge of cement powder into the atmosphere while Sesco was filling a dry cargo bulk tanker, and on October 4, 2019, observed what appeared to be an emissions event from one of the silo intake valves. Sesco failed to determine if both events were reportable or recordable emission events.

8.4. Failure to Maintain Pollution Emission Capture and Abatement Equipment. Defendant violated Texas Water Code § 7.101 and 30 Texas Administrative Code § 101.221(a) on June 13 and October 4, 2019, by failing to maintain pollution emission capture and abatement equipment in good working order. Specifically, on June 13, 2019, a PCS investigator observed (1) a pile of cement powder at the base of the silo where Sesco was filling a truck and (2) fugitive emissions coming from the piping close to the ground during filling operations. On October 4, 2019, a PCS investigator observed particulate matter discharging from one of the silo intake valves.

8.5. Failure to Treat In-Plant Roads and Vehicle Work Areas. Defendant violated Texas Water Code § 7.101 and 30 Texas Administrative Code § 106.144(2) from January 29, 2019 to present by failing to water or treat in-plant roads and vehicle work areas as necessary to achieve maximum control of dust emissions.

8.6. Failure to Provide Documentation of Compliance with PBR Requirements. Defendant violated Texas Water Code § 7.101 and 30 Texas Administrative Code § 106.8(c) from January 29, 2019 to present by failing to provide documentation of compliance with 30 Texas Administrative Code §§ 106.4 and 106.144 upon request by a PCS investigator. Specifically, a PCS investigator requested compliance documentation during January 29, June 13, June 18, July 24, August 23, and October 4, 2019 investigations. To date, Sesco has failed to provide PCS with the requested documentation.

8.7. Failure to Disclose Increase of Emissions. Defendant violated Texas Water Code § 7.101 and 30 Texas Administrative Code § 106.6(c) from at least August 23, 2019 to present by failing to revise the Facility certified registration of emissions prior to adding three additional hoppers and two additional silos to the Facility operations.

8.8. Failure to Obtain a Permit before Construction. Defendant violated Texas Water Code § 7.101 and 30 Texas Administrative Code § 116.110(a) from at least July 24, 2019 to the present by failing to obtain a permit prior to modifying Facility operations by adding three additional hoppers and two additional silos.

8.9. Unauthorized Storage or Disposal of Solid Waste. Defendant violated Texas Water Code § 7.101 and 30 Texas Administrative Code §§ 330.7(a), 330.15(a)&(c) from at least July 24, 2019 to the present by storing or disposing of solid waste at the Facility without authorization from the Commission. Specifically, since July 24, 2019, PCS investigations have documented a pile of

waste on the ground of the Facility containing hardened concrete, super sacks, cardboard, wooden pallets, and rubber tubing.

8.10. Discharge into the Water in the State. Defendant violated Texas Water Code §§ 7.101 and 26.121 and 30 Texas Administrative Code § 335.4(1) and from at least January 28, 2019 to the present by causing, suffering, or allowing cement waste to enter the storm drains and discharge or threaten a discharge into the waters in the State.

8.11. Discharge into water in the state. Defendant violated Texas Water Code §§ 7.101 and 26.121 from at least January 28, 2019 to the present by failing to have authorization to discharge Stormwater associated with the processing and re-packaging of cement under MSGP TXR050000. The SIC Code listed for the NOI for the Facility is listed as 4225 – General Warehousing and Storage (Sector P), which does not include the processing and re-packaging of cement.

8.12. Failure to Conduct Annual Employee Training. Defendant violated Texas Water Code § 7.101 and TPDES Permit No. TXR050000, Part III, Section A.4.f by failing to conduct annual employee training in 2017 and 2018.

8.13. Failure to Conduct Routine Facility Inspections. Defendant violated Texas Water Code § 7.101 and TPDES Permit No. TXR050000, Part III, Section B.2 by failing to conduct routine Facility inspections in all four quarters of 2017, all four quarters of 2018, and the first quarter of 2019.

8.14. Failure to Conduct Quarterly Visual Monitoring. Defendant violated Texas Water Code § 7.101 and TPDES Permit No. TXR050000, Part III, Section B.3 by failing to conduct quarterly visual monitoring in all four quarters of 2017, all four quarters of 2018, and the first and second quarters of 2019.

8.15. Failure to Conduct Annual Comprehensive Site Compliance Inspections.

Defendant violated Texas Water Code § 7.101 and TPDES Permit No. TXR050000, Part III, Section B.5 by failing to conduct annual comprehensive site compliance inspections in 2017 and 2018.

9. INJUNCTIVE RELIEF

9.1. As used in this Injunction, the following words and terms set forth below have the following meanings:

- A. "Day" or "Days" shall mean calendar day.
- B. "Defendant" shall mean SESCO Cement, Corp.;
- C. "Effective Date" shall mean the date the Court signs the Injunction;
- D. "Facility" shall mean the cement packaging and distribution facility located at 8510 E. Sam Houston Parkway, Houston, Harris County, Texas 77044;
- E. "TPDES Permit TXR050000" shall mean the Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR050000;
- F. "Plaintiff" or "Harris County" shall mean Harris County, Texas, a political subdivision of the State of Texas; and
- G. "Permit by Rule 106.144" shall mean a permit issued under Title 30 of the Texas Administrative Code § 106.144, attached and incorporated herein by reference.

9.2. As shown above, Defendant violated provisions of the Texas Water Code, the Texas Health and Safety Code and the Commission rules promulgated thereunder.

9.3. Therefore, Harris County seeks a temporary injunction ordering Defendant to comply with the Texas Water Code, the Texas Health and Safety Code and the Commission rules promulgated thereunder at the Facility. Specifically, Harris County requests a temporary

injunction 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:

- A. Immediately upon the Effective Date of the Injunction and continuously thereafter, Defendant Sesco Cement, Corp. shall allow Harris County Pollution Control Services Department investigators to conduct an investigation at the Facility at any reasonable time, which shall include the Facility business hours or any time during which the Facility is operating.
- B. Immediately upon the Effective Date of the Injunction, Defendant Sesco Cement, Corp. shall begin removal of the concrete particulate matter on the driveway entrances to the Facility.
- C. Immediately upon the Effective Date of the Injunction, Defendant Sesco Cement, Corp. shall begin removal of the concrete particulate matter on in-plant roads and areas where vehicles are driven or stored at the Facility.
- D. No later than 30 Days after the Effective Date of this Injunction, Defendant Sesco Cement, Corp. shall completely remove all concrete particulate matter from the driveway entrances to the Facility.
- E. No later than 30 Days after the Effective Date of this Injunction, Defendant Sesco Cement, Corp. shall completely remove all of the concrete particulate matter from in-plant roads and areas where vehicles are driven or stored at the Facility.
- F. No later than 14 Days after the Effective Date of this Injunction, Defendant Sesco Cement, Corp. shall develop a plan to clean, sweep or otherwise maintain the driveway entrances, in-plant roads, vehicles, and areas where vehicles are driven or stored at the Facility at regular daily intervals.

- G. No later than 30 Days after the Effective Date of this Injunction, Defendant SESCO Cement, Corp. shall begin and continuously thereafter clean, sweep, or otherwise maintain the driveway entrances, in-plant roads, vehicles, and areas where vehicles are driven or stored at the Facility at regular daily intervals.
- H. Immediately upon the Effective Date of this Injunction, Defendant SESCO Cement, Corp. shall create a log and continually thereafter document each time the driveway entrances, in-plant roads, and areas where vehicles are driven or stored at the Facility are cleaned, swept, watered or otherwise maintained.
- I. Immediately upon the Effective Date of this Injunction and continuously thereafter, Defendant SESCO Cement, Corp. shall maintain pollution emission capture and abatement equipment in good working order, in accordance with 30 Tex. Admin. Code § 101.221(a).
- J. Immediately upon the Effective Date of this Injunction, Defendant SESCO Cement, Corp. shall begin the removal of the piles of solid waste at the Facility, which includes but is not limited to hardened concrete, super sacks, cardboard, wooden pallets, and rubber tubing, and dispose of all solid waste at a permitted solid waste landfill. Defendant SESCO Cement shall submit copies of waste disposal receipts to Harris County no later than 15 Days after disposal at a permitted solid waste landfill.
- K. No later than 30 Days after the Effective Date of this Injunction, Defendant SESCO Cement, Corp. shall completely remove all of the piles of solid waste at the Facility, which includes but is not limited to hardened concrete, super sacks, cardboard, wooden pallets, and rubber tubing, and dispose at a permitted solid waste landfill. Defendant

Sesco Cement shall submit copies of waste disposal receipts to Harris County no later than 15 calendar Days after disposal at a permitted solid waste landfill.

- L. Immediately upon the Effective Date of this Injunction, Defendant Sesco Cement, Corp. shall begin to clean the storm drains at the Facility.
- M. No later than 30 Days after the Effective Date of this Injunction, Defendant Sesco Cement, Corp. shall completely clean the storm drains at the Facility and dispose of all material at a permitted solid waste landfill. Defendant Sesco Cement shall submit copies of waste disposal receipts to Harris County no later than 15 calendar Days after disposal at a permitted solid waste landfill.
- N. No later than 15 Days after the Effective Date of this Injunction, Defendant Sesco Cement, Corp. shall either remove the three unpermitted hoppers and two unpermitted silos from the Facility or submit a revised certified registration of emissions and amended PI-7 Form to the TCEQ.
- O. Immediately upon the Effective Date of this Injunction, Defendant Sesco Cement, Corp. shall begin developing written best management practices, including but not limited to a good housekeeping policy and employee training.
- P. No later than 30 Days after the Effective Date of this Injunction, Defendant Sesco Cement, Corp. shall complete a written policy for best management practices related to good housekeeping and employee training addressing storm water drainage and air emissions, and shall fully implement the written best management practices.
- Q. Immediately upon the Effective Date of this Injunction, and continuously thereafter, Defendant Sesco Cement, Corp. shall maintain all records required by Title 30 of the

Texas Administrative Code §§ 106.8(c) and 106.144, incorporated herein by reference.

- R. Immediately upon the Effective Date of this Injunction and continuously thereafter transport all material in a closed conveying system and all exhaust air to the atmosphere shall be vented through a fabric filter having a maximum filtering velocity of 4.0 feet per minute (ft/min) with mechanical cleaning or 7.0 ft/min with automatic air cleaning at the Facility, as required by 30 Tex. Admin. Code § 106.144.
- S. Immediately upon the Effective Date of the Injunction, and continuously thereafter, Defendant Sesco Cement, Corp. shall water, treat with dust suppressant chemicals, oil, or pave and clean as necessary to achieve maximum control of dust emissions, all permanent in-plant roads and vehicle work areas at the Facility, as required by 30 Tex. Admin. Code § 106.144.
- T. No later than 5 Days after the Effective Date of the Injunction, Defendant Sesco Cement, Corp. shall submit a Notice of Change (NOC) for coverage under TPDES Permit No. TXR050000 to the TCEQ updating the primary SIC code for the Facility to SIC Code 3241.
- U. No later than 15 Days after the Effective Date of the Injunction, Defendant Sesco Cement Corp. shall conduct annual employee training as required by TPDES Permit No. TXR050000, Part III. Section A.4.f.
- V. Immediately upon the Effective Date of the Injunction, and continuously thereafter, Defendant Sesco Cement Corp. shall conduct routine quarterly inspections by TPDES Permit No. TXR050000, Part III. Section B.2.

- W. No later than 15 Days after the Effective Date of the Injunction, and continuously thereafter, Defendant Sesco Cement Corp. shall conduct annual site compliance inspections as required by TPDES Permit No. TXR050000, Part III. Section B.5.
- X. Immediately upon submission to the TCEQ of the NOC required in Section S above, Defendant Sesco Cement, Corp. shall comply with all monitoring requirements associated with Sector E listed in TPDES Permit No. TXR050000, including but not limited to the following:
 - a. Numeric Effluent Limits;
 - b. Quarterly Visual Monitoring;
 - c. Storm Water Pollution Prevention Plan (SWP3); and
 - d. Monitoring Requirements for Storm Water Associated with Industrial Activity.
- Y. No later than 30 calendar days after the Effective Date of this Injunction and every 30 days thereafter, Sesco Cement, Corp. shall prepare and submit to Harris County and the State, a written Status Report for each requirement of the injunctive provisions of the Injunction. The Status Report shall describe: (1) the work performed in the two-week period immediately past, (2) the work expected to be performed in the current two-week period, along with a schedule for such work; and (3) the expected dates of completion of each task required in the injunctive provisions. The Status Report shall include a copy of the cleaning log detailed under Section A of this injunction and photographs of the Facility reflecting the work performed under each provision of this injunction. If no work had been performed at the Site, the Status Report shall state that no work has been performed and provide an explanation as to why no progress was made towards compliance with the injunctive provisions.

Z. Notifications to be submitted to the Harris County shall be submitted to:

Kathy Stone
Compliance Services Manager
Harris County Pollution Control Services Department
101 South Richey, Suite H
Pasadena, Texas 77506
Kathy.Porter@pcs.hctx.net

Elaine Savage
Water and Solid Waste Coordinator
Harris County Pollution Control Services Department
101 South Richey, Suite H
Pasadena, Texas 77506
Elaine.Savage@pcs.hctx.net

and

Sarah Jane Utley
Managing Attorney
Environmental Practice Group
Harris County Attorney's Office
1019 Congress, 15th Floor
Houston, Texas 77002
Sarah.Utley@cao.hctx.net

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

9.5. Upon final trial, Harris County requests that this Court make the temporary injunction against Defendant permanent.

10. ATTORNEY'S FEES AND COSTS

10.1. Harris County asks this Court to award Harris County its reasonable attorney's fees and costs of court incurred in relation to this proceeding. Tex. Water Code §§ 7.108 and 7.351.

PRAYER

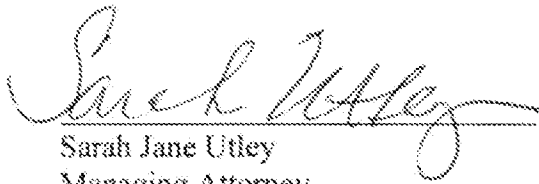
Harris County, Texas prays for judgment against SESCO Cement, Corp. as follows:

1. That the Defendant be cited to appear and answer herein;

2. 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;
3. That upon notice and hearing, a temporary injunction be granted against Defendant as requested above;
4. That upon final trial of this cause, permanent injunctive relief be granted against Defendant as requested above;
5. That upon final trial of this cause, Harris County shall have a money judgment against Defendant for attorney's fees and all of its court costs in this action, plus interest at the legal rate from the date of judgment until fully paid; and
6. That upon final trial of this cause, Harris County be granted all other relief, general or special, at law and in equity, to which it may show itself justly entitled.

Respectfully Submitted,

VINCE RYAN
Harris County Attorney



Sarah Jane Utley
Managing Attorney
Environmental Practice Group
State Bar No. 24042075

Harris County Attorney's Office
1019 Congress Avenue, 15th Floor
Houston, Texas 77002
Telephone: (713) 274-5124
Facsimile: (713) 437-4211
E-mail: sarah.utley@cao.hctx.net

**ATTORNEYS FOR PLAINTIFF
HARRIS COUNTY, TEXAS**

Harris County and the State of Texas v. SESCO Cement, Corp.
Harris County's Original Petition

VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, the undersigned notary, on this day personally appeared Elaine Savage, a person whose identity is known to me. After I administered an oath to her, upon her oath she said:

“My name is Elaine Savage, I am over the age of twenty-one years and of sound mind, capable of making this Verification, and personally acquainted with the facts herein:

I am employed by the Harris County Pollution Control Services Department as the Water and Solid Waste Compliance Coordinator.

I have read the foregoing *Harris County’s Original Petition and Application for a Temporary Restraining Order and Temporary and Permanent Injunctions* (the Petition) and am familiar with the facts alleged regarding the cement packaging and distribution facility known as Sesco Cement, Corp. located at 8510 E. Sam Houston Parkway, Houston, Harris County, Texas 77044. The facts alleged in Section 7 of the Petition are within my personal knowledge and are true and correct.”

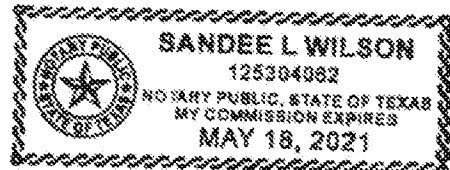


ELAINE SAVAGE

SUBSCRIBED AND SWORN TO before me on January 2, 2020, to certify which witness my hand and official seal.



NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



For Official Governmental Use Only - Do Not Disseminate to the Public: 88775776 - Page 28 of 28



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 6, 2020

Certified Document Number: 88775776 Total Pages: 28

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com