

The State, on behalf of TCEQ, a necessary and indispensable party pursuant to section 7.353 of the Texas Water Code, files this notice of appearance as a party-plaintiff against Defendant ExxonMobil Chemical Company (“ExxonMobil”). The undersigned attorney should be added to all party lists and served with copies of all pleadings, notices, orders, and discovery as

required by the Texas Rules of Civil Procedure. The State files this Notice subject to its Plea to the Jurisdiction.

PLEA TO THE JURISDICTION

I. Summary

Harris County filed this lawsuit for injunctive relief against ExxonMobil on August 1, 2019, for violations of State environmental laws and regulations resulting from an industrial explosion and fire that occurred at ExxonMobil's Olefins Plant (provided as **Attachment A**). For a local government to have standing to enforce State environmental laws, its governing body must adopt a resolution authorizing the exercise of the local government's enforcement power. Tex. Water Code § 7.352. This element of standing was not met by Harris County at the time it filed suit. The State now respectfully requests that this Court grant the State's Plea to the Jurisdiction and dismiss Harris County's suit for lack of standing.

II. Background

ExxonMobil owns and operates a chemical and refining complex located at 3525 Decker Road, Baytown, Harris County, Texas. The complex includes a refinery and a plant that processes a class of petrochemicals known as "olefins" to produce industrial chemicals, such as ethylene (the "Plant"). ExxonMobil operates the Plant under several permits issued by TCEQ in accordance with federal and state Clean Air Acts and the Texas Water Code, including Title V Operating Permit No. O-1553; New Source Review Permit Nos. 3452 and 102982; Texas Pollutant Discharge Elimination System ("TPDES") Permit Nos. WQ0002184000 and WQ0000592000; and several Permit-by-Rule registrations.

On the morning of July 31, 2019, an explosion erupted at the Plant igniting a fire in the Polypropylene Recovery Unit, a processing unit containing propane and polypropylene material.

The fire created large flames and a dark emissions plume that was visible for miles. The July 31, 2019 explosion and fire will be referred to as the “ExxonMobil Incident” or the “Incident.”

On August 1, 2019, Harris County filed this lawsuit for injunctive relief, costs, and attorney’s fees against ExxonMobil pursuant to Chapter 7 of the Texas Water Code for violations of Chapter 382 of the Texas Health and Safety Code (the “Texas Clean Air Act”) and State environmental regulations (*see* **Attachment A**). For its authority to file suit, Harris County’s Petition cites an order dated April 30, 2019, issued by the Harris County Commissioners Court (the “April 30th Order”) (provided as **Attachment B**).

The April 30th Order was issued in response to a request from the Harris County Attorney’s Office for “continuing authority to file environmental enforcement actions.” Letter from Vince Ryan, County Attorney, to Members of the Commissioners Court Re: Order Authorizing Harris County Attorney’s Office to Have Continuing Authority to File Environmental Enforcement Actions (Apr. 17, 2019) (included in **Attachment B**). The April 30th Order “authorizes the Harris County Attorney’s Office to have authority to file, as it deems necessary, environmental enforcement actions as authorized by Chapter 7, Subchapter H, of the Texas Water Code, including lawsuits related to violations of ... the Clean Air Act ... in order to protect the public and the environment, to preserve evidence, and to prevent additional negative impacts to the community.”¹

¹ The Harris County Commissioners Court identified other reasons for issuing the April 30th Order during its public meetings. For example, a Commissioner stated, “Assuming it meets the standard, I think it’s a good idea to give you all essentially a rolling authorization because what we’re really trying to do is get around the State, given the AG’s ability to rush to the court, and someone said earlier the concern is: are they rushing to the court to help abate the situation or to give cover to the person being accused of [inaudible].” Harris County Commissioners Court, April 30, 2019 Public Meeting, Item 1, Part 2 at 01:25:38, available at <http://harriscountytexas.swagit.com/play/04302019-586>. At a different public meeting, a Commissioner cited the need for a rolling authorization, “to let [the Harris County Attorney’s Office] get to the courthouse first, without having to have an emergency meeting to pull us in.” Harris County Commissioners Court, April 9, 2019 Public Meeting, Item 1, Part 1 at 00:41:57, available at <http://harriscountytexas.swagit.com/play/04092019-754>.

Under the terms of the April 30th Order, the Harris County Attorney's Office must notify the members of the Commissioners Court of the filing on the same day an action is filed and "place the action on the agenda for the next regular meeting of the Commissioners Court for approval."

On August 13, 2019, twelve days after Harris County filed its suit, the Harris County Commissioners Court approved its filing.

III. Argument and Authorities

Chapter 7 of the Texas Water Code ("Chapter 7") is the State's enforcement mechanism by which violations of a number of environmental laws, including the Texas Clean Air Act, may be pursued, either administratively or through civil suit. Pursuant to Chapter 7, the State may seek civil penalties and injunctive relief in response to violations of these laws and any rule or permit issued pursuant to these laws.

Chapter 7 confers standing on local governments to bring civil suits in the same manner as the State for violations of the Texas Clean Air Act and other statutes—but only when certain conditions are met. Tex. Water Code Ch.7, Subch. H. Without proper authorization, a local government does not have standing to bring suit under Chapter 7. Specifically, "if it appears that a violation or threat of violation of [the Texas Clean Air Act] ... or a rule adopted or an order or permit issued under [the Texas Clean Air Act] has occurred or is occurring in the jurisdiction of a local government, the local government ... may institute a civil suit ... in the same manner as the [TCEQ] in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation." Tex. Water Code § 7.351(a). However, prior to filing suit, "[i]n the case of a violation of [the Texas Clean Air Act], a local government may **not** exercise the enforcement power authorized by this subchapter **unless** its governing body adopts a resolution authorizing the

exercise of the power.” Tex. Water Code § 7.352 (emphasis added).

The Texas Supreme Court has repeatedly held that standing is a constitutional prerequisite to suit for both individuals and organizations. *S. Tex. Water Auth. v. Lomas*, 223 S.W.3d 304, 307 (Tex. 2007) (per curiam) (citing *Williams v. Lara*, 52 S.W.3d 171, 178 (Tex. 2001) and *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 447 (Tex. 1993)). First, standing must exist at the time a plaintiff files suit. *Martin v. Clinical Pathology Labs., Inc.*, 343 S.W.3d 885, 888 (Tex. App.—Dallas 2011, pet. denied). Courts lack subject-matter jurisdiction to adjudicate disputes initiated by parties lacking standing. *Vernco Constr., Inc. v. Nelson*, 460 S.W.3d 145, 149 (Tex. 2015) (per curiam). Where standing is conferred by statute, the statute itself serves as the framework for determining upon whom the Texas Legislature conferred standing and whether the claimant falls into this category. *In re K.D.H.*, 426 S.W.3d 879, 883 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *Dallas Fort Worth Int’l Airport Bd. v. Cox*, 261 S.W.3d 378, 385 (Tex. App.—Dallas 2008, no pet.); *In re Sullivan*, 157 S.W.3d 911, 915 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

A. Harris County Lacked Authority to File Suit on August 1, 2019.

The April 30th Order relied upon by Harris County to bring suit does not authorize exercise of enforcement power over the ExxonMobil Incident because it predates the Incident. A local government’s enforcement power under Chapter 7 is limited and does not come into existence until triggered by an occurrence of a violation. Texas Water Code Section 7.351(a) indicates that local governments have enforcement power to file suit “**if it appears that a violation or threat of violation** of [the Texas Clean Air Act] . . . or a rule adopted or an order or permit issued under [the Texas Clean Air Act] **has occurred or is occurring** in the jurisdiction of local government.” (emphasis added). Then, the local government must be granted authorization to exercise this

enforcement power by its governing body. Tex. Water Code § 7.352. Section 7.352 mandates “[i]n the case of a violation of . . . [the Texas Clean Air Act], a local government may not exercise the enforcement power authorized by this subchapter unless its governing body adopts a resolution authorizing the exercise of the power.” (emphasis added).

Read together, sections 7.351(a) and 7.352 prescribe an order of events: First, a violation or threat of violation must occur. Second, a local government’s governing body must adopt a resolution authorizing it to exercise enforcement power over that specific violation. In contrast, the April 30th Order attempts to authorize the exercise of an enforcement power that does not yet exist against unnamed defendants for completely unknown violations. The April 30th Order was issued three months prior to the ExxonMobil Incident—long before any violation or threat of violation would take place.

Further, the April 30th Order is not a “resolution authorizing exercise” of enforcement authority under the Texas Water Code because it requires approval by the Harris County Commissioners Court at its next regular meeting. *See Attachment B*. The language of the April 30th Order makes clear that the Harris County Commissioners Court may not even be aware of the suit before it is filed. *Id.* (“[T]he Harris County Attorney’s Office shall notify the members of Commissioners Court of the filing of the environmental enforcement action on the same day an action is filed pursuant to this Order.”) Also, any action pursued under the April 30th Order must also be placed on the agenda “for the next regular meeting of Commissioners Court for approval.” In other words, the approval of the lawsuit by the Commissioners Court at the subsequent August 13, 2019 meeting, not the April 30th Order, marks the point at which the “governing body adopts a resolution authorizing the exercise” of Harris County’s enforcement power.

Because the lawsuit against ExxonMobil was not authorized until August 13, 2019, Harris

County lacked standing at the time it filed suit on August 1, 2019. That Harris County ultimately obtained authorization later is irrelevant. Standing must exist at the time a plaintiff files suit and cannot be acquired later. *Martin*, 343 S.W.3d at 888; *Bell v. Moores*, 832 S.W.2d 749, 753-4 (Tex. App.—Houston [14th Dist.] 1992, writ denied) (“If there is no standing on the part of the plaintiff, the trial court has no jurisdiction over the merits of the claim asserted. . . . A trial court determines its jurisdiction at the time a suit is filed. At that time, the court either has jurisdiction or it does not. Jurisdiction cannot be subsequently acquired while the suit is pending.”); see also *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d at 446 n. 9 (“Our concern is with a party’s right to initiate a lawsuit and the trial court’s corresponding power to hear the case *ab initio*. Standing is determined at the time suit is filed in the trial court . . .”).

B. Allowing the April 30th Order to Authorize Future Suits Would Render Section 7.352 Meaningless.

The County’s apparent reading of section 7.352 would render the statute meaningless—contrary to long-standing statutory context and judicial interpretation. The Texas Supreme Court has long recognized the presumption that the entire statute is intended to be effective. Tex. Gov’t Code § 311.021(2). Courts do not read statutory language to be pointless if it is reasonably susceptible of another construction. *Marks v. St. Luke’s Episcopal Hosp.*, 319 S.W.3d 658, 664 (Tex. 2010) (citing *City of LaPorte v. Barfield*, 898 S.W.2d 288, 292 (Tex. 1995) (superseded by statute)). Courts will enforce the law as it is written and refrain from rewriting the text that the Legislature chooses. *Liberty Mut. Ins. Co. v. Adcock*, 412 S.W.3d 492, 494 (Tex. 2013) (citing *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009)).

The requirement that local governments first obtain approval from their governing bodies before exercising their environmental enforcement authority has been part of Texas environmental

law since 1967. Texas Water Quality Act of 1967, Act of May 3, 1967, 60th Leg., R.S. ch. 313, (SB 204) § 15, 1967 Tex. Gen. Laws 745, 755, (codified at Vernon's Texas Civil Statutes art. 7621d-1) ("Upon formal resolution of its governing body, a local government may institute and conduct a suit under this subsection."). The Legislature has had many opportunities to revisit this requirement and has even made minor revisions to its wording over time. *See, e.g.*, Act of May 30, 1969, 61st Leg., R.S. , ch. 760, (SB 147) §1, sec. 4.03, 1969 Tex. Gen. Laws 2229, 2247-48 (codified at Vernon's Texas Civil Statutes art. 7621d-1 (revising the provision above to read, "This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power.")). Yet the requirement, now codified in Texas Water Code section 7.352, remains substantively unchanged.

An order that provides blanket authority for speculative future lawsuits renders section 7.352 meaningless because it allows local governments to effectively bypass this requirement. The April 30th Order does just that. Under its terms, the decision to file a lawsuit lies not with the County Commissioners, but with the Harris County Attorney's Office—authority the Legislature, through the plain language of the statute, delegated to the County. *See Attachment B* (The April 30th Order "authorizes the Harris County Attorney's Office to have authority to file, **as it deems necessary**, environmental enforcement actions as authorized by Chapter 7, Subchapter H, of the Texas Water Code.") If the Legislature had intended to authorize the Harris County Attorney's Office to file suit under the Texas Clean Air Act without the prior authorization of the County Commissioners, it could have done so, but it did not provide that authorization here. *See, e.g.*, Tex. Bus. & Commerce Code § 17.48 (providing authority to a district or county attorney to institute and prosecute actions seeking injunctive relief under the Texas Deceptive Trade Practices Act and including no requirement for prior approval by the county's governing body).

That the County Commissioners must later approve the filing is immaterial. If the Legislature was indifferent about whether local governments should first obtain authorization to file suit, it would not have bothered to include section 7.352 and its predecessors. Giving proper effect to section 7.352, the Harris County Commissioners Court must authorize suit against ExxonMobil before Harris County Attorney's Office has standing to file a petition under Chapter 7.

IV. Prayer

Because Harris County filed its August 1, 2019 petition without proper authorization from its governing body, it lacked standing to bring this action. The State respectfully requests that the Court grant the State's Plea to the Jurisdiction and dismiss Harris County's suit.

Respectfully submitted,

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COUNSEL FOR THE STATE OF TEXAS

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing State of Texas's Notice of Appearance and Plea to the Jurisdiction was served on the following by eservice and email, on November 26, 2019.

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/s/ Katie B. Hobson
Katie B. Hobson
Assistant Attorney General

ATTACHMENT A

Unofficial Copy Office of Marilyn Burgess District Clerk

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 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.

II. 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
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**ATTORNEYS FOR PLAINTIFF
HARRIS COUNTY, TEXAS**

AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

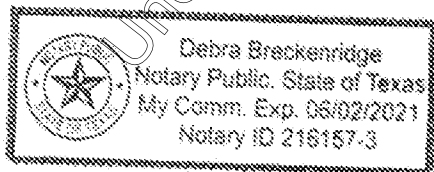
Before me, the undersigned notary, on this day personally appeared Rock Owens, a person whose identity is known to me. After I administered an oath to him, upon his oath he said:

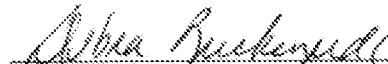
“My name is Rock Owens, I am over the age of twenty-one years, of sound mind, and am capable of making this Affidavit. I am personally acquainted with the facts herein.

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



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 November 26, 2019

Certified Document Number: 86438955 Total Pages: 10

Marilyn Burgess, DISTRICT CLERK
HARRIS COUNTY, TEXAS

ATTACHMENT B

Unofficial Copy Office of Marilyn Burgess District Clerk



Vince Ryan
Harris County Attorney

April 17, 2019

Vote of the Court:

	Yes	No	Abstain
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. A. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Radack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Members of the Commissioners Court
 1001 Preston, Ninth Floor
 Houston, Texas 77002

Re: Order Authorizing Harris County Attorney's Office to Have Continuing Authority to File Environmental Enforcement Actions

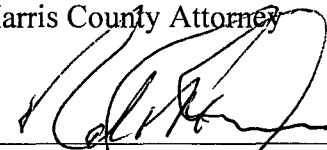
Dear Members of the Court:

Recent events have demonstrated the need for the County Attorney to file environmental enforcement actions as soon as possible after an event to protect the public and the environment, to preserve evidence, and to prevent additional negative impacts to the community. For these reasons, we request authorization from Commissioners Court to allow the County to file environmental enforcement actions in extraordinary circumstances at the appropriate time against necessary parties.

Thank you for your consideration of this request.

Sincerely,

VINCE RYAN
 Harris County Attorney


 Rock W. A. Owens
 Managing Attorney
 Environmental Practice Group

APPROVED:


 Robert Soard
 First Assistant County Attorney

Presented to Commissioners Court

APR 30 2019

APPROVE C/G
 Recorded Vol _____ Page _____

ORDER OF COMMISSIONERS COURT

Authorizing Harris County Attorney's Office to Have Continuing Authority to File Environmental Enforcement Actions

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on APR 30 2019, 2019, with all members present except none.

A quorum was present. Among other business, the following was transacted:

**ORDER AUTHORIZING THE HARRIS COUNTY ATTORNEY'S OFFICE
TO FILE ENVIRONMENTAL ENFORCEMENT ACTIONS
IN EXTRAORDINARY CIRCUMSTANCES**

Commissioner Cagle introduced an order and made a motion that the same be adopted. Commissioner A. Garcia seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

<u>Court</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Judge Hidalgo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Presented to Commissioners Court

APR 30 2019

APPROVE C/G
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The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

WHEREAS, multiple chemical fires occurred in Harris County during March and April of 2019; and

WHEREAS, Section 7.352 of the Texas Water Code authorizes a local government to bring an enforcement action under the Water Code by adopting a resolution authorizing the exercise of such power; and

WHEREAS, this Commissioners Court finds that this resolution is necessary and proper for Harris County to provide a more robust response to such incidents; and

WHEREAS, recent events demonstrate the need for the County Attorney to file environmental enforcement actions as soon as possible after an event in order to protect the public and the environment, to preserve evidence, and to prevent additional negative impacts to the community.

THEREFORE, IT IS RESOLVED AND ORDERED that the Harris County Commissioners Court hereby authorizes the Harris County Attorney's Office to have authority to file, as it deems necessary, environmental enforcement actions as authorized by Chapter 7, Subchapter H, of the Texas Water Code, including lawsuits related to violations of the Clean Air Act, Clean Water Act, Solid Waste Disposal Act, and any other civil action that the legislature has

authorized a local government to bring in order to protect the public and the environment, to preserve evidence, and to prevent additional negative impacts to the community.

IT IS FURTHER RESOLVED AND ORDERED that the County Attorney is authorized to join in such suit or suits any and all parties he deems proper, to do any and all things reasonable and necessary to compel compliance with the law,. Pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 6.001, the County Attorney shall be exempt from filing a bond to obtain an injunction.

IT IS RESOLVED AND ORDERED that the Harris County Attorney's Office shall notify the members of Commissioners Court of the filing of environmental enforcement actions on the same day an action is filed pursuant to this Order. The Harris County Attorney's Office shall place the action on the agenda for the next regular meeting of Commissioners Court for approval. The County Attorney shall seek Commissioners Court approval prior to settling an action filed pursuant to this Order.

IT IS RESOLVED AND ORDERED that it is the intention of Harris County Commissioners Court to review this Order during the May Commissioners Court meeting of each year.

All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purpose of this Order.

Unofficial Copy Office of Marilyn Buresh District Clerk