

Cause No. 2020-06634

HARRIS COUNTY, TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
and the	§	
	§	
STATE OF TEXAS	§	
Acting by and through the Texas	§	
Commission on Environmental Quality,	§	HARRIS COUNTY, TEXAS
a Necessary and Indispensable Party	§	
	§	
v.	§	
	§	
WATSON GRINDING AND	§	
MANUFACTURING CO.	§	
Defendant.	§	<u>113th</u> JUDICIAL DISTRICT

**HARRIS COUNTY'S ORIGINAL PETITION,
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND
TEMPORARY AND PERMANENT INJUNCTIONS**

On January 24, 2020 at approximately 4:30 in the morning, Watson Grinding and Manufacturing Co. (Watson or Defendant) discharged air pollutants into the atmosphere (including propylene and byproducts of combustion) when a 2,000 gallon propylene tank exploded killing two employees and causing extensive damage to nearby homes, some as far as ½ mile of the blast. Flying glass and debris injured many while they slept. As a result of the blast, many nearby residents cannot occupy their damaged homes while others now live in damaged structures. The Watson Facility explosion occurred in the incorporated area of the largest un-zoned city in the United State. Unfortunately the City of Houston and State of Texas environmental and property use regulations do not prohibit this kind of activity in neighborhoods where children play and citizens live and work and, because of the lack of regulation, Harris County has a duty to protect its residents from future occurrences at this Facility.

Watson's use of propylene was an ultra-hazardous activity and the company failed to exercise its duty of care to protect the public – particularly when the Facility is located in a neighborhood.

Plaintiff, Harris County, Texas, files this Original Petition, Application for Temporary Restraining Order and Temporary and Permanent Injunctions complaining that Watson caused a nuisance, trespass, violated the Common Law, and various environmental and regulatory statutes. Accordingly, Plaintiff, Harris County, seeks injunctive relief and where applicable damages, punitive damages, costs, and attorney's fees.

1. DISCOVERY AND RELIEF REQUESTED

1.1. Pursuant to Texas Rule of Civil Procedure 190.1, Harris County will conduct discovery under a Level 2 Discovery Control Plan. Tex. R. Civ. P. 190.3.

1.2. This case is not subject to the restrictions of expedited proceedings under Rule 169 because Harris County seeks non-monetary injunctive relief. Tex. R. Civ. P. 47(c)(1). Harris County is not seeking civil penalties at this time, but may do pursuant to Tex. Water Code § 7.3511.

2. AUTHORITY TO SUE

2.1. 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 Common Law, Texas Civil Practices and Remedies Code and 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), a political subdivision of the State of Texas, files this action pursuant Texas Water Code (Water Code) § 7.351.

3.2. The State of Texas (the State), 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.

4. DEFENDANT

4.1. Watson Grinding and Manufacturing Co. (Watson or Defendant) is a Texas Corporation that does business in Harris County, Texas. It may be served with citation by serving its registered agent, John M. Watson, at 4525 Gessner Road, Houston, Texas 77041 or wherever they may be found.

4.2. Watson owns and operates a metal fabricating and manufacturing company located at 4525 Gessner Road, Houston, Texas 77041 (Facility or Property).

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 the Common Law, and various environmental and regulatory statutes and all of the events or omissions giving rise to the claims occurred in Harris County. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(1).

6. APPLICABLE LAW

THE TEXAS CLEAN AIR ACT

The Texas Health and Safety Code

Purpose

6.1. The Texas Clean Air Act (the Act) is found in Chapter 382 of the Texas Health and Safety Code. 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 (Vernon 1992).

Unauthorized Emissions Prohibited

6.2. Except as authorized by a Commission rule or order, the 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. *Id.* at § 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. *Id.* at § 382.085(b).

6.3. The Act authorizes the TCEQ to adopt rules to carry out the intent and purposes of the Act. *Id.* at § 382.017 (Vernon 1992 & Supp. 2003). The TCEQ has promulgated rules (Commission rules) based on that authority, found in Chapters 101-22 of Title 30 of the Texas Administrative Code (Tex. Admin. 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).

The Texas Administrative Code

Outdoor Burning Generally Prohibited

6.6. Section 111.201 of Title 30 of the Tex. Admin. Code 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.

Regulatory Nuisance or Creating Air Pollution

6.7. Section 101.4 of Title 30 of the Texas Administrative Code prohibits any person from discharging air contaminants, in such concentration and of such duration as are or may tend to be injurious to or 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.

Failure to Report an Emission Event

6.8. Section 111.201 of Title 30 of the Texas Administrative Code requires any holder of a permit or authorization to report an unauthorized emission event within 24 hours of the discovery of the event.

7. BACKGROUND

7.1. Defendant owns and operates metal fabricating and manufacturing company located at 4525 Gessner Road, Houston, Texas 77041 (Facility or Property). The Facility is authorized for certain air emissions under the TCEQ "Permit by Rule" provisions located at Chapter 106 of Title 30 of the Texas Administrative Code and operates under the TCEQ Multi-Sector General Permit for Industrial Facilities.

7.2. On January 24, 2020, an explosion occurred at the Facility that was heard and felt throughout various parts of Harris County. Based on information and belief, a 2,000 gallon tank of propylene had a drop in pressure which resulted in the explosion. To date, the emission event has not been reported to the TCEQ STEERS database or to Harris County Pollution Control.

8. CLAIMS FOR TEXAS COMMON LAW NUISANCE AND NEGLIGENCE

8.1. Defendant created a public nuisance by unreasonably interfering with a public right and a public interest. Defendant's operations of the Watson Facility constituted a significant interference with the public's health and safety and adversely affected a part of the Harris County community.

8.2. Harris County alleges that it potentially suffered damages to its property, both real and personal, as a result of the negligent conduct of Watson and that such negligent conduct was the direct and proximate cause of said damages. Watson's negligent conduct may include, but is not limited to, its breach of its duties to adequately and properly maintain equipment used at the

Watson Facility, to adequately and properly store chemicals at the Watson Facility, to adequately and properly train, supervise and monitor its employees in the maintenance and operation of the Watson Facility, endangering or damaging property owned by Harris County.

8.3. Harris County potentially suffered actual, special, consequential, and incidental damages in excess of the jurisdictional limits of this Court due to Watson's negligence. Due to the high degree of risk involved in Watson's conduct, Watson's subjective constructive awareness of this risk, Watson operated in a reckless manner demonstrating a conscious indifference to welfare and safety of others, including employees and residents of Harris County. Harris County seeks exemplary damages for Watson's gross negligence.

9. DEFENDANT'S VIOLATIONS OF THE TEXAS CLEAN AIR ACT

Outdoor Burning Without Permit

9.1. Defendant violated § 7.101 of the Texas Water Code and 30 Tex. Admin. Code § 111.201 by causing or permitting outdoor burning within the State of Texas without an order or permit on January 24, 2019 when an explosion and resulting fire occurred at the Watson Facility.

Creating a Condition of Air Pollution

9.2. Defendant violated § 7.101 of the Texas Water Code, Tex. Health and Safety Code § 382.085 and 30 Tex. Admin. Code § 101.4 by discharging air contaminants, in such concentration and of such duration as are or may tend to be injurious to or 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 on January 24, 2019 when an explosion occurred at Watson Facility. The explosion destroyed nearby homes and displaced an unknown number of nearby residents.

Failure to Report Emissions Event

9.3. Defendant violated Texas Water Code § 7.101, and 30 Tex. Admin. Code § 101.201 by failing to report an unauthorized emission event within 24 hours of discovery of the event.

Emissions Event

9.4. Defendant violated § 7.101 of the Texas Water Code and Tex. Health and Safety Code § 382.085 by emitting air contaminants into the atmosphere without authorization on January 24, 2019 when an explosion and resulting fire occurred at the Watson Facility.

10. INJUNCTIVE RELIEF

10.1. As shown above, Defendant Watson violated provisions of the Texas Clean Air Act, Texas Administrative Code and the Common Law. Additionally, the explosion of January 24, 2020 has created a potentially hazardous condition at the Watson Facility and adjacent property with ongoing risk of fire hazards and the repeat of the explosion that led to the violation of the forgoing law.

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

- a. “Defendant” or “Watson” shall mean Watson Grinding and Manufacturing, Co.
- b. “Effective Date” shall mean the date this Court signs the injunction.
- c. “Immediately” shall mean before 5:00 p.m. CST on the next Day after the Effective Date.
- d. “Plaintiff” or “Harris County” shall mean Harris County, Texas, a political subdivision of the State of Texas.
- e. “Facility” or “Watson Facility” shall mean the real property located at 4525 Gessner Road, Houston, Texas 77041.

10.3. Harris County requests a temporary restraining order immediately directing Defendant, its employees, agents, successors, and assigns to be (1) ordered to cease all operations and not resume operations at the Watson Facility until a determination is made by the City of Houston Fire Department and an independent third-party expert, as agreed by the parties and/or as appointed by the Court, completes a process hazard analysis and finds that operations will not cause further fires or explosion, (2) enjoined from disposing of any solid waste, unless it has been properly characterized and is disposed of at a TCEQ permitted facility authorized to accept the waste stream, (3) enjoined from spilling or discharging any waste or liquid from any container onto the ground, or into or adjacent to any waters in the state, (4) enjoined from destroying any records pertaining to the Facility and from removing any business records from the Watson Facility, (5) ordered to immediately submit to Harris County a detailed inventory of all substances, products, and materials located at the Watson Facility, (6) enjoined from removing any inventory from the Watson Facility without records documenting the inventory, the quantity, where it was moved, how it was moved, why it was moved, its location at the Watson Facility, its current location, and who moved it, and (7) ordered to share all water, air, and ground samples with Harris County, as well as how those samples were taken and the data analyzed.

(a) Notifications to be submitted to Harris County shall be submitted to:

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

and

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

(b) Harris County requests any additional or alternative injunctive relief deemed appropriate by this Court.

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

11. ATTORNEY'S FEES AND COSTS

11.1. 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.

12. PRAYER

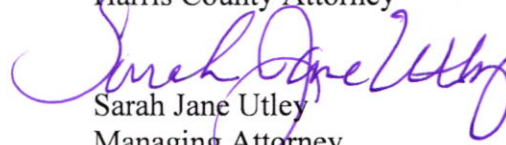
12.1. Plaintiff, Harris County, Texas asks this Court for pretrial relief, a final judgment and a permanent injunction against Defendant as follows:

- a. That the State of Texas be made a necessary and indispensable party to the suit as required by law;
- b. That this 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;
- c. That upon notice and hearing, a temporary injunction be granted against Defendant as requested above;
- d. That, upon trial, this Court grant a permanent injunction against Defendant, in favor of Plaintiff, for the injunctive relief as laid out above;

- e. That, upon trial, this Court grant Harris County its reasonable attorney's fees and that all costs be assessed against Defendant, plus interest at the legal rate from the date of judgment until fully paid; and
- f. This Court grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFF
HARRIS COUNTY, TEXAS**