

will continue to pose a threat to human health and the environment, as they will cause further air pollution in Harris County. In support of this cause of action, Plaintiff respectfully shows the Court the following:

I. AUTHORITY TO SUE

1.1 Plaintiff Harris County will conduct discovery under level 2 of TEX. R. CIV. P. 190.

1.2 Plaintiff 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.

1.3 Plaintiff Harris County brings this cause of action on its own behalf and on behalf of the citizens and residents of Harris County, Texas, for injunctive relief under the authority granted in section 7.351 of the Texas Water Code.

II. PARTIES TO THIS SUIT

PLAINTIFF

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

DEFENDANT

2.2 Defendant, Rebel Contractors, Inc. is a Texas corporation, in good standing. It may be served with citation by serving its registered agent, George H. Lowry, at 17942 Interstate Highway 45, Willis, Texas 77378.

NECESSARY AND INDISPENSABLE PARTY

2.4 The Texas Commission on Environmental Quality (TCEQ) is a necessary and indispensable party to this lawsuit pursuant to section 7.353 of the Texas Water Code.

III. JURISDICTION AND VENUE

3.1 This is a suit for injunctive relief pursuant to section 7.351 of the Texas Water Code. This Court has jurisdiction over the case and venue is proper in Harris County because Harris County is the county in which all violations occurred.

IV. SPECIFIC VIOLATIONS BY DEFENDANT

Applicable Law- Texas Health & Safety Code-Texas Clean Air Act

4.1 The Texas Clean Air Act is found in chapter 382 of the Texas Health & 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.¹

4.2 Except as authorized by a commission rule or order, the Texas Clean Air Act prohibits any person from causing, suffering, allowing, or permitting the emission of any air contaminant or the performance of any activity that causes or contributes to air pollution.² 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 TCEQ rule or order.³

¹ Tex. Health & Safety Code Ann. § 382.002 (Vernon 1992).

² Tex. Health & Safety Code Ann. § 382.085(a) (Vernon 1992 & Supp. 2003).

³ Tex. Health & Safety Code Ann. § 382.085(b) (Vernon 1992 & Supp. 2003).

4.3 The Clean Air Act authorizes the TCEQ to adopt rules to carry out the intent and purposes of the Act.⁴ The TCEQ has promulgated rules based on that authority, found in chapters 101-122 of Title 30 of the Texas Administrative Code.

4.4 Section 111.201 of Title 30 of the Texas Administrative Code prohibits any person from causing, suffering, allowing, or permitting any outdoor burning within the State of Texas except as provided by that subchapter or by orders or permits of the TCEQ.

4.5 In addition, facilities in the state of Texas, which may emit air contaminants, shall obtain a permit to emit those contaminants unless they satisfy the conditions for a Permit by Rule. Defendant have no air permit for their air emissions from its burning, but has attempted to operate its trench burners under a Permit by Rule located at 30 T.A.C. § 106.496.

4.6 Finally, § 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.⁵

Specific Violations of Texas Health & Safety Code-Texas Clean Air Act

4.7 On August 28, 2003 in the 22200 block of Aldine Westfield Road in Harris County, Texas, Defendant' trench burner caused a nuisance. The trench burner had material stacked above the air curtain while in operation. Operating instructions were not

⁴ Tex. Health & Safety Code Ann. § 382.017 (Vernon 1992 & Supp. 2003).

⁵ 30 Tex. Admin. Code § 101.4 (West 2003).

posted on site. Ash was not removed in such a manner as to prevent it from becoming airborne. These acts constitute violations of 30 TAC 106.496 (10), (11) and (13).

4.8 On September 10, 2003 in the 22200 block of Aldine Westfield Road in Harris County, Texas, Defendant' trench burner had material stacked above the air curtain while in operation in violation of 30 TAC 106.496(10).

4.9 On September 24, 2003 in the 22200 block of Aldine Westfield Road in Harris County, Texas material was being burned while the trench burner was turned off and 2-3 gallons of hydraulic oil was observed to have been spilled on the ground. These acts violate 30 TAC 330.5(c) and 30 TAC 111.201.

4.10 On October 24, 2003 at 22251 Aldine Westfield Road in Harris County, Texas, material was being burned while the trench burner was turned off in violation of 30 TAC 111.201.

4.11 On November 5, 2003 in the 23800 block of Cypresswood in Harris County, Texas, two trench burners operated by the Defendant caused a nuisance. The trench burner located on the northern portion of the site exceeded the legal width by eight feet. Opacity from the northern trench burner was observed to be 100% for ten minutes and material was stacked above the air curtain. The trench burner on the southern portion of the site had burning material in it while the blower was off. Material in both the southern and northern trench burner was being burned after 6:00 PM. These acts constitute violations of 30 TAC 101.4, 30 TAC 106.496(3), (4), (6), (8) and (10).

V. INJUNCTIVE RELIEF

5.1 Harris County is entitled to injunctive relief from continuing violations or the threat of violations. Pursuant to sections 7.032 and 7.351 of the Water Code, this Court

may grant Harris County, and the State of Texas, without bond or other undertaking, any prohibitory or mandatory injunction the facts of this case warrant. The facts of this case warrant injunctive relief prohibiting Defendant, their employees, agents, successors, and or assigns, from future violation of the Texas Health and Safety Code and the regulations promulgated thereunder.

5.2 Specifically, Harris County seeks a temporary injunction, directing Defendant, their employees, agents, successors, and assigns, to comply with chapter 382 of the Texas Health and Safety Code and the rules and regulations adopted pursuant to the chapter including but not limited to 30 T.A.C. §§ 101.4, 106.496, and 111.201.

5.3 Plaintiff also seeks permanent injunctive relief to ensure no further violations of the Texas Health and Safety Code by Defendant.

5.4 Plaintiff requests that the Court order the foregoing to be accomplished by a date certain.

VI. CIVIL PENALTIES

6.1 Under section 7.102 of the Texas Water Code, a person or entity who violates any provision of chapter 382 of the Health and Safety Code or any rule, permit, or order of the commission is subject to a civil penalty of not less than \$50 nor more than \$25,000 for each day of each violation. Each day of a continuing violation is a separate violation.

VII. PRAYER

WHEREFORE, Plaintiff prays:

7.1 that the Court issue a show cause order requiring Defendant to appear before the Court to show why they should not be enjoined from further violation of the laws of the State of Texas, as set out above;

7.2 that citation issue in due form of law against Defendant;

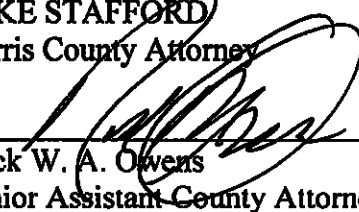
7.3 that upon final trial a permanent injunction should be issued against Defendant, in favor of Plaintiff, for the injunctive relief as aforesaid;

7.4 that upon final trial in this cause, the Court grant civil penalties against Defendant, within the range allowed by law, as requested above;

7.5 that upon final trial in this cause, the Court grant Harris County and the State its reasonable attorney's fees and that all costs be assessed against Defendant; and

7.6 the Court grant such other and further relief to which Plaintiff may be justly entitled.

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ATTORNEY FOR PLAINTIFF
HARRIS COUNTY, TEXAS

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

On this day, Jennifer L. Wheeler, Enforcement Coordinator of the Pollution Control Division of the Harris County Public Health and Environmental Services Department, known to me through the presentation of a Texas State Driver's License, appeared before me, the undersigned notary public, and after I administered an oath to her, upon her oath she said:

"My name is Jennifer L. Wheeler, Enforcement Coordinator of the Pollution Control Division of the Harris County Public Health and Environmental Services Department, I am more than 21 years of age and capable of attesting to the following: I have read the foregoing Plaintiff's Original Petition for Permanent Injunction and in my official capacity as Enforcement Coordinator. I am personally familiar with the investigation into the described violation and the facts contained in the foregoing petition are true and correct."


Jennifer L. Wheeler

SWORN TO and SUBSCRIBED before me by Jennifer L. Wheeler on this the 23rd day of February, 2004.


Notary Public, State of Texas

