

No. D-1-GN-19-001593

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| STATE OF TEXAS, | § | IN THE DISTRICT COURT OF |
| | § | |
| <i>Plaintiff,</i> | § | |
| | § | |
| v. | § | TRAVIS COUNTY, TEXAS |
| | § | |
| INTERCONTINENTAL | § | |
| TERMINALS COMPANY, LLC, | § | |
| | § | |
| <i>Defendant.</i> | § | <u>261ST</u> JUDICIAL DISTRICT |

**STATE OF TEXAS'S ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF**

The State of Texas, by and through its Attorney General, on behalf of the Texas Commission on Environmental Quality, files this Original Petition and Application for Injunctive Relief, seeking injunctive relief, civil penalties, and attorney's fees for violations of the Texas Clean Air Act and rules and permits issued thereunder.

I. DISCOVERY

1.1 Plaintiff will conduct discovery under a Level 2 Discovery Control Plan pursuant to Texas Rule of Civil Procedure 190.3.

1.2 This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because the State seeks non-monetary injunctive relief and the State's claim for civil penalties could exceed \$100,000.

II. PARTIES

2.1 Plaintiff, the State of Texas (the State), is authorized to bring this suit through its Attorney General at the request of the Texas Commission on Environmental Quality (TCEQ), pursuant to Texas Water Code sections 7.032 and 7.105. No filing fee or other security for costs is required of the State under Texas Civil Practice and Remedies Code section 6.001.

2.2 Defendant Intercontinental Terminals Company, LLC (ITC) is a foreign corporation organized under the laws of Delaware and authorized to do business in Texas. ITC may be served through its registered agent C.T. Corporation System at 1999 Bryan Street, Suite 900, Dallas, TX 75201, or wherever it may be found.

2.3 ITC is a “person” within the meaning of section 382.003(10) of the Texas Health and Safety Code and section 311.005(2) of the Texas Government Code.

III. JURISDICTION AND VENUE

3.1 This Court has jurisdiction over this case and the venue is proper in Travis County because this is an action to enforce chapter 382 of the Texas Health and Safety Code, TCEQ rules promulgated thereunder, and the Texas Water Code. Tex. Water Code §§ 7.032, 7.105; Tex. Gov’t Code § 2001.202.

IV. NATURE OF SUIT AND AUTHORITY

4.1 This is a civil suit to enforce the Texas Clean Air Act, codified in chapter 382 of the Texas Health and Safety Code, and rules adopted by TCEQ pursuant to the Texas Clean Air Act. This matter involves a petrochemical storage site in the Houston area that caught fire and emitted multiple air contaminants without TCEQ authorization. The State seeks injunctive relief, civil penalties, attorney's fees, and court costs.

4.2 It is the policy of the State 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 esthetic enjoyment of air resources by the public and maintenance of adequate visibility." Tex. Health & Safety Code § 382.002(a).

4.3 TCEQ has the duty and responsibility to administer the provisions of the Texas Clean Air Act, to establish the level of quality to be maintained in the State's air, and to control the quality of the State's air. Tex. Health & Safety Code § 382.011.

4.4 The Texas Clean Air Act provides that unless authorized by TCEQ, no person may "cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution." Tex. Health & Safety Code § 382.085(a).

4.5 A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of the Texas Clean Air Act or of any TCEQ rule or order. Tex. Health & Safety Code § 382.085(b).

4.6 An “air contaminant” includes “particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.” Tex. Health & Safety Code § 382.003(2).

4.7 “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 § 382.003(3).

4.8 The Texas Clean Air Act confers jurisdiction on TCEQ to adopt rules regulating the management of atmospheric emissions of air contaminants. Tex. Health & Safety Code § 382.017. The Texas Clean Air Act also confers jurisdiction on TCEQ to issue permits to facilities that emit air contaminants and to establish and enforce permit conditions within each permit. Tex. Health & Safety Code §§ 382.051, 382.0513; 30 Tex. Admin. Code § 116.115.

4.9 “Title V Operating Permit” refers to permits issued pursuant to TCEQ’s Federal Operating Permits Program, as codified in chapter 122 of title 30 of the Texas Administrative Code. 30 Tex. Admin Code § 122.

4.10 “New Source Review Permit” refers to TCEQ permits issued pursuant to title 30 Texas Administrative Code section 116 for new or modified sources of air emissions at a site. 30 Tex. Admin. Code § 116.

4.11 TCEQ is authorized to adopt Permits-by-Rule for certain types of facilities that are determined to not be a significant contributor to air contaminants in the atmosphere. Tex. Health & Safety Code § 382.05196. To qualify for a Permit-by-Rule, a facility must meet the requirements specified in title 30 Texas Administrative Code section 106.4. The total actual emissions authorized under a Permit-by-Rule may not exceed the following: 250 tons per year of carbon monoxide (CO) or nitrogen oxides (NO_x); 25 tons per year of volatile organic compounds (VOC), sulfur dioxide (SO₂), or inhalable particulate matter (PM); or 25 tons per year of any other air contaminant. 30 Tex. Admin. Code § 106.4(a)(1)(A)-(B), (E).

4.12 After registering for a Permit-by-Rule, all representations regarding construction plans, operating procedures, and maximum emission rates contained in a facility’s certified registration become conditions upon which the facility permitted by rule shall be constructed and operated. 30 Tex. Admin. Code § 106.6(b).

4.13 An “emissions event” means “an upset event, or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in the unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.” Tex. Health & Safety Code § 382.0215(a)(1); 30 Tex. Admin. Code § 101.1(28).

4.14 An “upset event” is an “unplanned and unavoidable breakdown or excursion of a process or operation that results in unauthorized emissions.” 30 Tex. Admin. Code § 101.1(110).

4.15 An “unauthorized emission” includes the emission of any air contaminant that exceeds any air emission limitation in a TCEQ permit, rule, or order. 30 Tex. Admin. Code § 101.1(108). Therefore, all “emissions events” are unauthorized because the emissions events exceed air emission limitations in a permit, rule, and/or order of TCEQ. *Id.*

4.16 The Texas Clean Air Act authorizes TCEQ to develop criteria for determining when an emissions event is reportable and when an emissions event is considered excessive. Tex. Health & Safety Code §§ 382.0215, .0216.

4.17 “Reportable emissions event” means any emissions event that, in any 24-hour period, results in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined by title 30 Texas Administrative Code section 101.1(89). 30 Tex. Admin. Code § 101.1(88).

4.18 Within 24 hours after the discovery of an emissions event, an owner or operator of a regulated entity shall (1) determine if the event is a reportable emissions event and (2) notify TCEQ regional office where the regulated entity is located, and all appropriate local air pollution control agencies with jurisdiction, if the emission event is reportable. 30 Tex. Admin. Code § 101.201(a)(1).

4.19 At TCEQ's request, an owner or operator of a facility experiencing an emissions event must provide additional or more detailed information regarding the event and must do so within the timeframe established by the request. 30 Tex. Admin. Code § 101.201(f).

4.20 Under title 30 Texas Administrative Code section 111.111(a), no person may cause, suffer, allow, or permit visible emissions from any source unless authorized by the Texas Clean Air Act or TCEQ rule, permit, or order.

4.21 Under title 30 Texas Administrative Code section 101.4, no person shall discharge air contaminants in such concentration and of such duration that are injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or interfere with the normal use and enjoyment of animal life, vegetation, or property.

4.22 The Texas Clean Air Act confers jurisdiction on TCEQ to adopt rules regulating the outdoor burning of waste. Tex. Health & Safety Code § 382.018. Pursuant to this authority, TCEQ adopted title 30, chapter 111 of the Texas

Administrative Code to prohibit unauthorized outdoor burning. Under title 30 Texas Administrative Code section 111.201, a person may not cause, suffer, allow, or permit any unauthorized outdoor burning within the State of Texas.

4.23 No person may cause, suffer, allow, or permit any activity in violation of the Texas Clean Air Act or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

4.24 A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit under TCEQ's jurisdiction shall be assessed a civil penalty of not less than \$50 nor more than \$25,000 for each violation. Tex. Water Code § 7.102. Each day of a continuing violation is a separate violation. Tex. Water Code § 7.102.

4.25 The Attorney General, at the request of TCEQ, may bring an action for injunctive relief and civil penalties if it appears that a violation or threat of a violation of a statute within the TCEQ's jurisdiction, or a rule adopted or an order or a permit issued under such a statute, has occurred or is about to occur. Tex. Water Code §§ 7.032, 7.105.

V. BACKGROUND

5.1 ITC owns and operates a petrochemical storage site located at 1943 Independence Parkway South in La Porte, Texas 77571, on a 265-acre site situated on the Houston Ship Channel at mile point 47, two miles north of Texas Route 225

and 3.3 miles east of Beltway 8 (the Site). ITC operates the Site as an independent for-hire terminal that receives, stores, blends, and transfers petroleum products and segregated chemicals owned by numerous external customers. The Site consists of approximately 242 tanks that store various petrochemical liquids and gases. ITC operates the Site under Title V Operating Permit No. O-1061, New Source Review Permit No. 1078, and several Permit-by-Rule registrations (collectively, the Permits).

5.2 On March 17, 2019, a petrochemical storage tank at the Site caught fire, which subsequently spread to adjacent tanks. The fire continued to burn until the early morning hours of March 20, 2019. According to ITC, the fire was caused by a leak in a pipe in a tank containing naphtha. The fire spread to at least six other storage tanks in the same complex. The burning tanks held naphtha and xylene (fuels used in gasoline and plastics) and toluene (a volatile liquid used to make nail polish remover and paint thinner). According to information gathered by continuous air monitoring stations in the area, elevated levels of VOCs have been detected at various times and at varied concentrations since the fire's occurrence. Also, according to ITC, air emissions tests detected the presence of VOCs six miles away from the Site. The first shelter-in-place was issued on March 17, 2019 and was subsequently lifted in the early morning of March 18, 2019. On the morning of

March 21, 2019, the day after the fire was extinguished, elevated levels of VOCs resulted in the issuance of a second shelter-in-place.

5.3 The fire caused the release of several air contaminants including, but not limited to, PM_{2.5}, PM₁₀, benzene, NO_x, toluene, and xylene. This emissions event and the air contaminants associated with it are not authorized by ITC's Permits or TCEQ.

5.4 Most of the chemicals identified in the fire are used in the production of gasoline, and short-term exposure to their fumes can cause fatigue, dizziness, and headaches. Both Deer Park and La Porte Independent School Districts (ISDs) suspended classes on March 18, 2019. Classes were canceled again on March 20, 2019, for some school districts, including Deer Park, La Porte, Sheldon, Channelview, and Galena Park ISDs. Due to elevated benzene levels, a number of districts canceled classes for March 21, 2019, including Deer Park, La Porte, Pasadena, Channelview, Sheldon, and Galena Park ISDs.

5.5 The fire at the Site created a large, dark emissions plume that engulfed the Site and surrounding areas. The plume was visible miles away from the Site.

VI. CLAIM 1—CIVIL PENALTIES FOR VIOLATIONS OF TCEQ RULES

Unauthorized Air Pollution at the Site

6.1 Under Texas Health and Safety Code section 382.085(a), except as authorized by TCEQ, no person may cause, suffer, allow, or permit the emission of

any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution. Moreover, under Texas Health and Safety Code section 382.085(b), no person may cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of the Texas Clean Air Act or of any TCEQ rule or order. Furthermore, no person may cause, suffer, allow, or permit any activity in violation of the Texas Clean Air Act or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

6.2 On March 17, 2019, a petrochemical storage tank at the Site caught fire. According to ITC, the fire was caused by a leak in a pipe in a tank containing volatile naphtha, which subsequently ignited. The fire spread to at least six other storage tanks in the same complex that continued to burn until March 20, 2019. The burning tanks held naphtha and xylene (fuels used in gasoline and plastics) and toluene (a volatile liquid used to make nail polish remover and paint thinner). According to information gathered by continuous air monitoring stations, elevated levels of VOCs have been detected at various times and at various degrees since the occurrence of the fire. Also, according to ITC, air emissions tests detected the presence of VOCs six miles away from the Site. On the morning of March 21, 2019, the day after the fire was extinguished, elevated levels of VOCs resulted in the issuance of a second shelter-in-place. The burning at the Site emitted several air contaminants, including

PM_{2.5}, PM₁₀, benzene, NO_x, toluene, and xylene. This emissions event and the air contaminants associated with it are not authorized by ITC's Permits or TCEQ.

6.3 Therefore, ITC caused, suffered, allowed, or permitted the emission of air contaminants from the Site in violation of Texas Health and Safety Code section 382.085(a) and (b), and Texas Water Code section 7.101 each day from March 17, 2019, until at least March 21, 2019. Each air contaminant emitted, each separate emission point, and each day that such emissions occurred constitute separate violations.

6.4 Pursuant to Texas Water Code section 7.102, the State is entitled to civil penalties against ITC within the statutory range of not less than \$50 nor greater than \$25,000 for each day of each violation alleged in paragraph 6.3 of this petition.

Unauthorized Outdoor Burning at the Site

6.5 Under title 30 Texas Administrative Code section 111.201, a person may not cause, suffer, allow, or permit any unauthorized outdoor burning within the State of Texas. No person may cause, suffer, allow, or permit any activity in violation of the Texas Clean Air Act or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

6.6 On March 17, 2019, a petrochemical storage tank at the Site caught fire which subsequently spread to adjacent tanks. This burning was not authorized by

TCEQ. At least six petrochemical storage tanks caught fire and continued to burn until March 20, 2019.

6.7 Therefore, ITC caused, suffered, allowed, or permitted outdoor burning at the Site in violation of title 30 Texas Administrative Code section 111.201 and Texas Water Code section 7.101 each day from March 17, 2019 until March 20, 2019.

6.8 Pursuant to Texas Water Code section 7.102, the State is entitled to civil penalties against ITC within the statutory range of not less than \$50 nor greater than \$25,000 for each day of violation alleged in paragraph 6.7 of this petition.

Nuisance

6.9 Under title 30 Texas Administrative Code section 101.4, no person shall discharge air contaminants in such concentration and of such duration that are injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or interfere with the normal use and enjoyment of animal life, vegetation, or property. No person may cause, suffer, allow, or permit any activity in violation of the Texas Clean Air Act or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

6.10 Emissions from the fire at the Site can cause fatigue, dizziness, and headaches from short-term exposure. The first shelter-in-place was issued on March 17, 2019 and was subsequently lifted in the early morning of March 18, 2019.

On the morning of March 21, 2019, the day after the fire was extinguished, elevated levels of VOCs resulted in the issuance of a second shelter-in-place. Both Deer Park and La Porte ISDs suspended their schools on Monday, March 18, 2019. Classes were canceled again on Wednesday, March 20, 2019, for some school districts, including Deer Park, La Porte, Sheldon, Channelview, and Galena Park ISDs. On March 21, 2019, a number of districts canceled classes, including Deer Park, La Porte, Pasadena, Channelview, Sheldon, and Galena Park ISDs.

6.11 Therefore, ITC caused, suffered, allowed, or permitted a nuisance at the Site in violation of title 30 Texas Administrative Code section 101.4 and Texas Water Code section 7.101, on at least March 18, 2019, March 20, 2019, and March 21, 2019.

6.12 Pursuant to Texas Water Code section 7.102, the State is entitled to civil penalties against ITC within the statutory range of not less than \$50 nor greater than \$25,000 for each day of violation alleged in paragraph 6.11 of this petition.

Unauthorized Visible Emissions

6.13 Under title 30 Texas Administrative Code section 111.111(a), no person may cause, suffer, allow, or permit visible emissions from any source unless authorized by the Texas Clean Air Act or TCEQ rule, permit, or order. No person may cause, suffer, allow, or permit any activity in violation of the Texas Clean Air Act or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

6.14 Beginning on March 17, 2019 until at least March 20, 2019, the fire at the Site created a large, dark emissions plume, which engulfed the Site and surrounding areas. The plume was visible miles away from the Site. The visible emissions from the fire are not authorized by the Texas Clean Air Act or any TCEQ rule, permit, or order.

6.15 Therefore, ITC caused, suffered, allowed, or permitted unauthorized visible emissions at the Site in violation of title 30 Texas Administrative Code section 111.111 and Texas Water Code section 7.101, from at least March 17, 2019 to March 20, 2019.

6.16 Pursuant to Tex. Water Code section 7.102, the State is entitled to civil penalties against ITC within the statutory range of not less than \$50 nor greater than \$25,000 for each day of violation alleged in paragraph 6.15 of this petition.

VII. CLAIM 2—INJUNCTIVE RELIEF

7.1 The Attorney General may commence an action in the name of the State and on behalf of TCEQ to enjoin a violation or threatened violation of any “statute within the commission’s jurisdiction or a rule adopted or an order or a permit issued under such a statute.” Tex. Water Code §§ 7.032(b), 7.105.

7.2 As alleged above, ITC has violated, and continues to violate, the Texas Water Code, the Texas Clean Air Act, and regulations promulgated by TCEQ as

alleged in section VI above. ITC is obligated, and may be enjoined by either a mandatory or prohibitory injunction to comply with the law.

7.3 No bond is required of the State prior to the Court granting an injunction as set forth in Texas Water Code section 7.032(d).

7.4 Upon final trial, the State requests that this Court issue any injunctive relief as may be warranted by the facts.

VIII. ATTORNEY'S FEES AND COSTS

8.1 This is an action brought by the State to recover civil penalties and for injunctive relief. Therefore, as set forth in Texas Water Code section 7.108, the Attorney General is entitled to recover and collect reasonable attorney's fees, investigative costs, and court costs incurred in relation to this proceeding on behalf of the State. In the event of an appeal to the Court of Appeals or to the Texas Supreme Court, the Attorney General is entitled to recover and collect its additional reasonable attorney's fees and court costs on behalf of the State.

IX. POST-JUDGMENT INTEREST

9.1 Pursuant to Texas Finance Code section 304.003, the State asks this Court to award the State post-judgment interest on all amounts awarded in relation to this proceeding, at the maximum rate allowed by law.

PRAYER

The State of Texas requests the following:

1. that citation be issued for Defendant Intercontinental Terminals Company, LLC to appear and answer;
2. that upon trial, the Court grant a permanent injunction against Defendant Intercontinental Terminals Company, LLC, as requested above;
3. that the Court grant judgment against Defendant Intercontinental Terminals Company, LLC for appropriate civil penalties within the range allowed by law;
4. that the Court award the State its reasonable attorney's fees, court costs, and reasonable investigative costs in this action;
5. that the Court award the State post-judgment interest on all amounts awarded in this suit until fully paid; and
6. that the Court award the State all such other relief, general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

PRISCILLA M. HUBENAK
Chief, Environmental Protection Division

KELLIE E. BILLINGS-RAY
Deputy Chief, Environmental Protection Division
State Bar No. 24042447
Kellie.Billings-Ray@oag.texas.gov

/s/ Ekaterina DeAngelo
EKATERINA DEANGELO
Assistant Attorney General
State Bar No. 24087398
Ekaterina.DeAngelo@oag.texas.gov

DAVID A. TERRY
Assistant Attorney General
State Bar No. 2407944
David.Terry@oag.texas.gov

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
ENVIRONMENTAL PROTECTION DIVISION
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
Telephone: (512) 475-4011
Facsimile: (512) 320-0911

ATTORNEYS FOR THE STATE OF TEXAS