



# ENVIRONMENTAL CIRCUIT RIDER PROGRAM:



# CIVIL ENVIRONMENTAL ENFORCEMENT AND PROSECUTION

FALL 2004



PREPARED IN COOPERATION WITH THE HOUSTON-GALVESTON  
AREA COUNCIL AND THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY.



**ENVIRONMENTAL CIRCUIT RIDER PROGRAM:  
CIVIL ENVIRONMENTAL ENFORCEMENT AND PROSECUTION**

**FALL 2004**

**PREPARED FOR:**

**HOUSTON-GALVESTON AREA COUNCIL  
P.O. BOX 22777  
HOUSTON, TEXAS 77227-22777  
(713) 627-3200**

**IN COOPERATION WITH:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**PREPARED BY:**

**CATHY SISK, SENIOR ASSISTANT COUNTY ATTORNEY  
CLARISSA BAUER, SENIOR ASSISTANT COUNTY ATTORNEY**



H-GAC WOULD LIKE TO ACKNOWLEDGE MIKE STAFFORD, HARRIS COUNTY ATTORNEY,  
FOR THE PROFESSIONAL GUIDANCE AND ASSISTANCE PROVIDED BY THE OFFICE OF THE  
HARRIS COUNTY ATTORNEY

# **HOUSTON-GALVESTON AREA COUNCIL ENVIRONMENTAL CIRCUIT RIDER PROJECT**

## **CIVIL ENVIRONMENTAL ENFORCEMENT AND PROSECUTION**

### **Overall Objective and Program Purpose**

Following the development of studies and training manuals on combating illegal dumping, the Houston-Galveston Area Council (H-GAC) implemented the Environmental Circuit Rider Project (ECRP) which is a two-year pilot program to provide assistance to the 13-counties within its region on the enforcement and prosecution of environmental offenses. The goals of the ECRP include providing counties with on-site environmental enforcement and prosecution training. This manual was developed as a tool to assist attorneys in the areas described in the following.

- Temporary Restraining Orders,
- Preliminary and Permanent Injunctions, and the
- Civil Prosecution of Illegal Dumping,
- Illegal Discharge Into or Adjacent to Waters of the State,
- Air Quality Violations and Illegal Public Health Nuisances

The manuals are not intended to present a complete listing of all the environmental statutes and regulations available for environmental enforcement.

Cathy Sisk

Ms. Sisk is the Chief of the Environmental Division of the Harris County Attorney's Office, where she has served since July 1991. Her duties include responsibility for the civil enforcement of state environmental and nuisance laws as well as various county regulations, including the Harris County Subdivision Regulations, the Floodplain Management Regulations and the Regulations for Storm Water Management.

Ms. Sisk is also the Legislative Liaison to the Texas Legislature for the Harris County Attorney's Office. Her responsibilities at the legislature include drafting and securing passage of the county's legislative platform during the biennial legislative sessions.

From 1989-1991, Ms. Sisk served as General Counsel for the Harris-Galveston Coastal Subsidence District. From 1984-1989, Ms. Sisk was an Assistant Attorney General in the Environmental Protection Division of the Attorney General's Office, except for an 18-month period spent on loan to the Texas Department of Agriculture as Chief of Pesticide Enforcement, where she assisted the department in expanding its pesticide enforcement program.

Community involvement has included service on the City of West University Place Recycling Committee, the City of Austin Hazardous Materials Transportation Advisory Committee, the Texas Department of Health and National Cancer Institute Cancer Mapping Study Advisory Group, the University of Texas School of Law Lawyer/Student Mentor Program, the Houston Marathon, and the boards of the Citizens Environmental Coalition and the Galveston Bay Foundation. Ms. Sisk also served as Chair of the Houston-Galveston Area Council's Natural Resource Advisory Committee from 1996 to 1999.

Ms. Sisk is an honors graduate of the University of Texas at Austin and the University of Texas School of Law. She received her Bachelor of Arts Degree in Economics in 1981 and her Juris Doctor in 1984.

Clarissa Kay Bauer

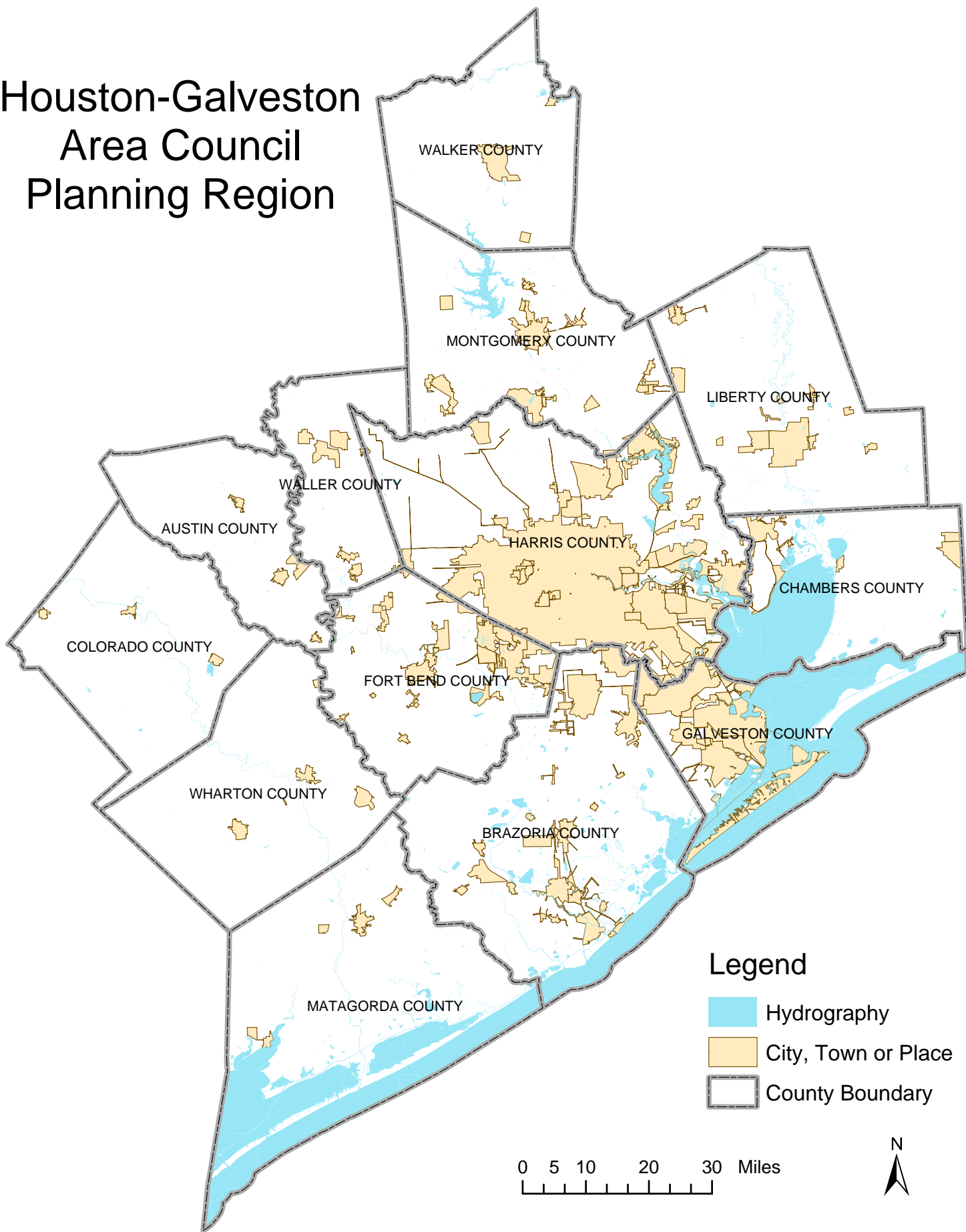
Ms. Bauer is a Senior Assistant County Attorney for the Harris County Attorney's Office, where she has worked since 1987. She represents Harris County in environmental enforcement actions stemming from violations of state environmental statutes, including the Texas Clean Air Act, the Texas Solid Waste Disposal Act, and the Texas Water Code.

Ms. Bauer is board-certified in Civil Trial Law by the Texas Board of Legal Specialization. She is an adjunct professor of law at South Texas School of Law where she teaches courses on Environmental Enforcement.

Community involvement has included serving on the Houston Bar Association's Environmental Section Board of Directors, co-chairing the Houston Bar Association's Lawyers Against Waste Committee, and co-chairing the Houston Bar Association's Continuing Legal Education Committee.

Ms. Bauer received her Juris Doctor from Tulane Law School in 1984. She received a Bachelor of Science from the University of Louisville with a major in Political Science and a minor in Chemical Engineering.

# Houston-Galveston Area Council Planning Region



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## General Outline for Preparing an Environmental Lawsuit<sup>1</sup>

Review File from Client

Does adequate evidence exist to meet the elements of proof?

Witnesses

Photographs

Investigative Reports

Determine the parties to be added to petition. Consider adding property owners, lessees, and facility operators. Tex. Water Code § 7.353 requires that the Texas Commission on Environmental Quality be included in the lawsuit as a necessary and indispensable party.

Determine what remedies are appropriate: civil penalties, injunctive relief, or both. Civil penalties range from \$50 to \$25,000 for each day of each violation. Each day of a continuing violation is a separate violation. Tex. Water Code § 7.102. Any civil penalties recovered will be split equally between the state and the local government which instituted the suit. Tex. Water Code § 7.107.

If injunctive relief is appropriate, determine whether a temporary restraining order or temporary injunction is needed. Tex. Water Code § 7.032(d) states that a court may grant a prohibitory or mandatory injunction without bond.

Jurisdiction is in state district court. Tex. Water Code § 7.351(a).

Venue. Suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs. Tex. Water Code § 7.105(c)

Obtain Commissioners' Court order authorizing suit and litigation expenses. Tex. Water Code § 7.352 requires the governing body of a local government to adopt a resolution before filing an enforcement action.

Prepare Petition. If injunctive relief is requested, it must be verified by affidavit (TRCP 682).

Send the petition to TCEQ and the Attorney General with request for waiver of service (see attached example):

Ms. Karen Kornell  
Chief, Natural Resources Division  
Office of the Attorney General  
P. O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Fax: (512) 320-0911

Mr. Paul Sarahan  
Director, Litigation Support Division  
TCEQ MC-175  
P. O. Box 13087  
Austin, Texas 78711-3087  
Fax: (512) 239-3434

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<sup>1</sup> Chapter 7 of the Texas Water Code governs enforcement actions under the Water Code, Clean Air Act, and Solid Waste Disposal Act.

July 23, 2004

Mr. Paul Sarahan  
Director, Litigation Support Division  
MC-175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Cause No. 2004-21982; **Harris County, Texas and the State of Texas v. Nova Chemicals, Inc.**; In the 164<sup>th</sup> Judicial District of Harris County, Texas.

Dear Mr. Sarahan:

Enclosed please find a copy of the Plaintiff's Original Petition for Injunction that was filed on April 30, 2004. As you know, the State of Texas is a necessary and indispensable party to this lawsuit. Harris County requests that the State waive service of citation in this cause and that the petition and accompanying material be forwarded to the proper Assistant Attorney General so that the State may make an appearance in this case.

If you have any questions regarding this matter, please feel free to call me at 713-755-8282.

Sincerely,

MIKE STAFFORD  
Harris County Attorney

By \_\_\_\_\_  
CATHY J. SISK  
Assistant County Attorney

MAS/CJS/keg  
Enclosure

c: Ms. Karen Kornell  
Chief, Natural Resources Division  
Office of the Attorney General  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

**Elements**  
**Illegal Dumping of Solid Waste (Texas Health & Safety Code 361)**

30 Texas Administrative Code §330.4(a) is a rule adopted by the TCEQ pursuant to Texas Health & Safety Code Chapter 361. It states:

1. No person
2. may cause, suffer, allow, or permit
3. any activity of storage, processing, removal, or disposal of
4. municipal solid waste
5. without authorization from the TCEQ

THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

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 the \_\_\_\_ day of \_\_\_\_\_, 2002, with the following members present, to-wit:

Robert Eckels	County Judge
El Franco Lee	Commissioner, Precinct No. 1
James Fonteno	Commissioner, Precinct No. 2
Steve Radack	Commissioner, Precinct No. 3
Jerry Eversole	Commissioner, Precinct No. 4

and the following members absent, to-wit: \_\_\_\_\_, constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING COUNTY ATTORNEY TO FILE  
SUIT AND AUTHORIZING EXPENSES**

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

AYES:  
NAYS:  
ABSTENTIONS:

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, the Harris County Public Health & Environmental Services Department, Pollution Control Division has conducted multiple investigations at or near the property at 11842 Eastex Freeway in Harris County;

Whereas, Nicholas P. Polotko, doing business as Allwood Tree Disposal, operates a municipal solid waste storage and/or processing facility at 11842 Eastex Freeway;

Whereas Nicholas P. Polotko and Steven M. Polotko own the property at 11842 Eastex Freeway;

Whereas, the Public Health & Environmental Services Department, Pollution Control Division has determined that Nicholas P. Polotko and Steven M. Polotko have operated at this location in violation of TEX. HEALTH AND SAFETY CODE ANN. §361.001-361.754 (Vernon 1992 & Supp. 2001) and the regulations promulgated under that statute;

Whereas, the Public Health & Environmental Services Department, Pollution Control Division has requested that the County Attorney take the necessary legal action to obtain an injunction compelling compliance and to obtain civil penalties for legal violations which have occurred on or near the property at 11842 Eastex Freeway;

THEREFORE, IT IS ORDERED that the County Attorney is hereby authorized, on behalf of Harris County, to file suit against Steven M. Polotko and Nicholas P. Polotko, individually and doing business as Allwood Tree Disposal, as well as any other person or entity that has caused, suffered, allowed, or permitted the offending activities, and any operator, owner, successor in title or interest to same, for civil penalties, injunctive and other relief, as is authorized by the above referenced as well as any additional environmental, public health and welfare protection laws;

IT IS FURTHER ORDERED AND RESOLVED 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, and to finally dispose of the suit by obtaining compliance and civil penalties within the statutorily specified range and as authorized by applicable law, as he deems appropriate. Pursuant to TEX. CIV. PRAC. & REM. CODE ANN. §6.001, the County Attorney shall be exempt from filing a bond to obtain an injunction; and

IT IS FURTHER ORDERED that the County Attorney is authorized to hire expert witnesses and other consultants and to expend the amount of \$5,000.00 as initial expenses in the case, which amount includes, but is not limited to, funds for court reporter fees, expert fees and expenses, discovery costs, and any other reasonable and necessary expense. All fund transfers necessary to accomplish the above are hereby ordered to be made. All such costs and fees should be charged to the general fund.

No. \_\_\_\_\_

**HARRIS COUNTY, TEXAS**  
**Plaintiff**

**and**

**THE STATE OF TEXAS**

**v.**

**STEVEN M. POLOTKO and**  
**NICHOLAS P. POLOTKO, individually**  
**and doing business as ALLWOOD**  
**TREE DISPOSAL**  
**Defendants**

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

\_\_\_\_\_ **JUDICIAL DISTRICT**

**Plaintiff’s Original Petition, Request for TRO, and Request for Disclosure**

Harris County, Texas, plaintiff, complains of Steven M. Polotko and Nicholas P. Polotko, individually and doing business as Allwood Tree Disposal. Steven M. Polotko and Nicholas P. Polotko are the owners of real property located at 11842 Eastex Freeway in Harris County, Texas.<sup>1</sup> Nicholas P. Polotko operates a disposal facility (Allwood Tree Disposal) at 11842 Eastex Freeway and stockpiles solid waste at the site, including large quantities of tree parts, mulch, and wood products. The disposal facility creates a fire hazard and violates multiple public health and environmental protection laws, including the Texas Solid Waste Disposal Act. To protect individuals who live in close proximity to 11842 Eastex Freeway, and to protect the land and air near this location, Harris County seeks a temporary restraining order, temporary injunction, and permanent injunction prohibiting any further disposal of wood at the site and requiring the removal of the existing flammable material. Harris County also seeks civil penalties, attorney’s fees, and court costs. All conditions precedent have been performed or have occurred.

**DISCOVERY**

1. Harris County will conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3. Under the authority of Texas Rule of Civil Procedure 194, plaintiff requests that the defendants disclose, within 50 days of the service of this petition and request, the information or material described in Rule 194(a) – (k).

<sup>1</sup> This real estate is further described in the deed attached as Exhibit “A” and incorporated by reference.

## **PARTIES**

2. Plaintiff Harris County, Texas, is a political subdivision of the State of Texas and is authorized to bring this action by virtue of authority granted under Texas Water Code Ann. §7.351 (Vernon 2000).<sup>2</sup>

3. The State of Texas, acting through the Texas Natural Resource Conservation Commission (TNRCC), is a necessary and indispensable party to this suit.<sup>3</sup> Service on the State is not necessary at this time.

4. Defendant Steven M. Polotko is an owner of the real estate at 11842 Eastex Freeway. He may be served at his place of employment: 1235 North Loop West, Suite 710, Houston, Texas 77008.

5. Defendant Nicholas P. Polotko is an owner of the real estate at 11842 Eastex Freeway. He may be served at his residence: 8414 Bunker Bend Drive, Humble, Texas 77346.

## **JURISDICTION AND VENUE**

6. The defendants are both Texas residents. The Court has subject matter jurisdiction over this case pursuant to Texas Water Code Ann. §7.351 (Vernon 2000). Venue is proper in Harris County because Harris County is the county in which the violations occurred and the county in which one of the defendants resides. Texas Water Code Ann. §7.105(c)(Vernon 2000).

## **VIOLATIONS**

### Solid Waste Disposal

7. The Texas Health and Safety Code (Texas Solid Waste Disposal Act) and associated Administrative Code provisions regulate solid waste, including tree parts, mulch, and wood.

8. 30 Texas Administrative Code §330.4(a) states:

No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste unless such activity is authorized by a permit or other authorization ...

9. 30 Texas Administrative Code §330.5(a)(3) states:

...a person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste...in such a manner as to cause the endangerment of human health and welfare or the environment.

10. 30 Texas Administrative Code §332.4(6) governs composting facilities. It states:

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<sup>2</sup> Although this lawsuit is brought to enforce the Texas Solid Waste Disposal Act and associated rules and regulations, the Texas Water Code contains the enforcement provisions.

<sup>3</sup> Tex. Water Code Ann. §7.353 (Vernon 2000).

Facility operations shall not be conducted in a manner which causes endangerment of human health and welfare, or the environment.

11. The defendants have engaged in acts and practices that have been declared to be unlawful by 30 Texas Administrative Code §330.4(a), §330.5(a)(3), and §332.4(6). The defendants have caused, suffered, allowed, or permitted the illegal storage, processing, and disposal of municipal solid waste at 11842 Eastex Freeway since at least January 26, 1998. They have operated the facility at 11842 Eastex Freeway in a manner that causes endangerment of human health, welfare, and the environment because they have stockpiled large quantities of flammable material in an unsafe manner. Specifically, they have failed to convert wood materials into recycled product, failed to limit the size of the wood piles, failed to provide fire breaks to prevent the spread of fire, and failed to have adequate fire-fighting equipment on site. See Exhibit “B”, affidavit of Patrick Pendleton, incorporated herein by reference.

#### **INJUNCTIVE RELIEF**

12. 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 Texas Water Code, this Court may grant Harris County, and the TNRCC, without bond or other undertaking, any prohibitory or mandatory injunction the facts of this case warrant. Harris County seeks injunctive relief prohibiting the defendants, their employees, agents, successors, and assigns, from future violations of the Texas Health and Safety Code and the regulations promulgated thereunder.

13. Specifically, Harris County seeks a temporary restraining order directing defendants, their employees, agents, successors, and assigns to immediately:

- a. Stop accepting any additional solid waste at 11842 Eastex Freeway; and
- b. Stop using 11842 Eastex Freeway as a disposal site for wood products; and
- c. Remove all existing solid waste from the site, including mulch, tree parts, pallets, creosote crossties, and wood products, and take it to a TNRCC permitted solid waste landfill or process all wood material at the site into recycled product within 90 days; and
- d. Provide the Harris County Attorney with copies of disposal receipts, trip tickets, manifests, tipping fee receipts, or other proof of lawful disposal for all solid waste taken to a TNRCC permitted solid waste landfill; and
- e. Refrain from all outdoor burning at the site; and



- f. Maintain the site so that it is not a fire hazard, including but not limited to, breaking up (within 60 days) the large piles of wood into windrows with fire lanes big enough to accommodate fire trucks.

14. Plaintiff also seeks a temporary injunction and a permanent injunction to ensure no further violations of the Texas Health and Safety Code and the Texas Administrative Code occur at 11842 Eastex Freeway.

### **CIVIL PENALTIES**

15. A person or entity who violates any provision of the Texas Health and Safety Code, or any rule, order, or permit of the TNRCC is subject to a civil penalty of not less than \$50 nor more than \$25,000 for each day of each violation.<sup>4</sup> Each day of a continuing violation is a separate violation.<sup>5</sup> Harris County alleges that violations have occurred continually since January 26, 1998 and seeks the maximum allowable civil penalty for each separate day of violation.

### **PRAYER**

16. For these reasons, plaintiff prays for the following:

- a) that this Court issue a temporary restraining order against the defendants for the relief requested by plaintiff;
- b) that citation issue in due form of law against defendants;
- c) that this Court issue a show cause order requiring defendants to appear before the Court to show why they should not be enjoined from further violation of the law, as set out above;
- d) that upon failure by the defendants to show cause why an injunction should not be issued, the Court grant a temporary injunction against defendants, in favor of plaintiff, for the injunctive relief as requested;
- e) that the Court set a date certain for trial for a permanent injunction as required by Texas Rule of Civil Procedure 683. At trial, plaintiff will request that a permanent injunction issue to compel defendants to comply with state law;
- f) that upon final trial in this cause, the Court grant civil penalties against defendants, within the range allowed by law;

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<sup>4</sup> Texas Water Code Ann. §7.102 (Supp. 2002)

<sup>5</sup> Texas Water Code Ann. §7.103 (Vernon 2000)

f) that upon final trial in this cause, the Court grant Harris County and the State their reasonable attorney's fees and reimbursement for expenses and that all costs be assessed against defendants; and

g) that the Court grant such other and further relief to which plaintiff may be justly entitled.

Respectfully submitted,

MICHAEL A. STAFFORD  
Harris County Attorney

By: \_\_\_\_\_

Clarissa Kay Bauer  
SBN 01920350  
1310 Prairie, Suite 940  
Houston, Texas 77002  
(713) 755-8282  
FAX - (713) 755-2680

**ATTORNEYS FOR PLAINTIFF  
HARRIS COUNTY, TEXAS**

## Exhibit B

### VERIFICATION

THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

BEFORE ME, the undersigned authority, on this day personally appeared Patrick Pendleton, whose identity was verified by presentation of a current Texas driver's license, and who swore on oath the following:

1. I am over 18 years of age. I have never been convicted of a crime, and I am competent to make this affidavit. I have personal knowledge of the matters stated herein.
2. I am the Solid Waste Supervisor for the Harris County Public Health and Environmental Services Department. As part of my job, I enforce the Texas Health and Safety Code and the Texas Natural Resource Conservation Commission's rules and regulations dealing with solid waste.
3. On several occasions, including January 26, 1998, March 23, 1999, and May 27, 1999, I inspected the property at 11842 Eastex Freeway, Harris County, Texas and determined that the owners were improperly storing solid waste, including large quantities of tree parts, mulch, scrap lumber, and other wood waste in violation of the Texas Solid Waste Disposal Act and associated administrative regulations.
4. On December 4, 2001, I inspected 11842 Eastex Freeway again and determined that solid waste continued to be stored at the site in violation of the Texas Solid Waste Disposal Act and associated administrative regulations. No progress had been made in reducing the quantity of wood product. A high percentage of the material at the site had been stored there for over a year.
5. On December 19, 2001, the Public Health and Environmental Services Department sent Nicholas Polotko a Violation Notice informing him that his facility at 11842 Eastex Freeway was violating the Texas Health and Safety Code and the Texas Natural Resource Conservation Commission's Municipal Solid Waste Regulations. Mr. Polotko was told to remove all existing municipal solid waste from the site and transport it to an authorized disposal facility.
6. On January 17, 2002, I again visited 11842 Eastex Freeway. Approximately 400,000 cubic yards of wood product is stored at the site. The wood material includes mulch, tree parts, pallets, and creosote crossties. This material is flammable and is stored in an unsafe manner. The owner has failed to limit the size of the piles of wood, has failed to maintain fire breaks, and appears to have no fire-fighting equipment at the property. Based upon my experience as the Solid Waste Supervisor for the Harris County Public Health and Environmental Services Department and my inspections of 11842 Eastex

Freeway, it is my opinion that this site is violating the Texas Solid Waste Disposal Act and 30 Texas Administrative Code §330.4(a), §330.5(a)(3), and §332.4(6).

---

Patrick Pendleton

SUBSCRIBED AND SWORN TO BEFORE ME, on this the \_\_\_\_ day of January 2002, to certify which witness my hand and seal of office.

---

NOTARY PUBLIC  
in and for the State of Texas

**HARRIS COUNTY, TEXAS**  
**Plaintiff**

**and**

**THE STATE OF TEXAS**

**v.**

**STEVEN M. POLOTKO and**  
**NICHOLAS P. POLOTKO, individually**  
**and doing business as ALLWOOD**  
**TREE DISPOSAL**  
**Defendants**

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**190th JUDICIAL DISTRICT**

**AGREED TEMPORARY INJUNCTION**

On January 22, 2002, plaintiff Harris County, Texas filed its original petition and request for a temporary injunction. Plaintiff, Harris County, and defendants, Nicholas P. Polotko, individually and doing business as Allwood Tree Disposal, and Steven M. Polotko, announced to the Court that they had reached an agreement. The parties submitted this Agreed Temporary Injunction to the Court for approval.

The Court finds that a temporary injunction should be granted in this case.

It is therefore ordered that Harris County’s application for temporary injunction is granted and defendants Steven Polotko and Nicholas Polotko, their agents, servants and employees, are hereby ORDERED to:

1. Immediately cease and desist accepting stumps, logs, log sections, branches, lumber, municipal solid waste<sup>1</sup> and clean wood material<sup>2</sup> at 11842 Eastex Freeway,<sup>3</sup> Harris County, Texas.

<sup>1</sup> “Municipal solid waste” is defined as solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste. Municipal solid waste does not include recyclable material, such as clean wood material.

<sup>2</sup> “Clean wood material” is defined as wood or wood materials, including stumps, roots, or vegetation with intact rootball, sawdust, pallets, mulch, and manufacturing rejects. Clean wood chips may be accepted at the site.

<sup>3</sup> 11842 Eastex Freeway (sometimes referred to herein as the “site”) is more particularly described in Exhibit “1”. Exhibit “1” is incorporated herein by reference.

2. Continue grinding into mulch all unprocessed wood at the site. The defendants are further ORDERED to continue grinding, on a regular basis, wood material not already processed into mulch.
3. Refrain from all outdoor burning at the site, including controlled burning such as trench burning.
4. Allow representatives from Harris County and the Texas Natural Resource Conservation Commission access to the site at any time to monitor compliance with state law and with this temporary injunction.
5. Provide all-weather access for firefighting apparatus to all parts of the site at all times.
6. Within 30 days, create a written fire prevention and suppression plan for the site and submit it to the Harris County Fire Marshal for recommendations.

The defendants agree to waive Texas Rules of Civil Procedure 681 through 689.

IT IS FURTHER ORDERED that plaintiff, pursuant to Texas Water Code §7.032 and §7.351, is not required to file a bond in support of this order.

IT IS FURTHER ORDERED that trial on the merits of this cause is set for \_\_\_\_\_ a.m./p.m. on the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

---

JUDGE PRESIDING

**AGREED:**

MICHAEL A. STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
SBN 01920350  
1310 Prairie, Suite 940  
Houston, Texas 77002  
(713) 755-8282  
Fax (713) 755-2680

ATTORNEYS FOR HARRIS COUNTY

**AGREED:**

---

Steven M. Polotko  
SBN 16105290  
1235 N. Loop West, Suite 710  
Houston, Texas 77008  
Telephone (713) 863-9909  
Fax (713) 863-9910

ATTORNEY FOR DEFENDANTS STEVEN M. POLOTKO  
AND NICHOLAS P. POLOTKO

No. 2002-03133

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and</b>	§	
	§	
<b>THE STATE OF TEXAS</b>	§	
	§	<b>HARRIS COUNTY, TEXAS</b>
<b>v.</b>	§	
	§	
<b>STEVEN M. POLOTKO and</b>	§	
<b>NICHOLAS P. POLOTKO, individually</b>	§	
<b>and doing business as ALL WOOD</b>	§	
<b>TREE DISPOSAL</b>	§	
<b>Defendants</b>	§	<b>190th JUDICIAL DISTRICT</b>

**AGREED FINAL JUDGMENT**

Plaintiffs, Harris County, Texas and the State of Texas, and defendants, Steven M. Polotko, All Wood Recycling, Inc., and Nicholas P. Polotko, submit this Agreed Final Judgment.

**1. Background**

Harris County brought this lawsuit against Steven M. Polotko, All Wood Recycling, Inc., and Nicholas P. Polotko pursuant to the Texas Solid Waste Disposal Act for alleged violations relating to solid waste stored at 11842 Eastex Freeway, Harris County, Texas.<sup>1</sup> The State of Texas was joined in this action as a necessary and indispensable party.

**2. Stipulations**

The parties stipulate to the following:

- a. That Harris County and the State of Texas are duly authorized to bring this cause of action pursuant to state law.

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<sup>1</sup> “11842 Eastex Freeway” (sometimes referred to herein as the “site”) is more particularly described in Exhibit “A”. Exhibit “A” is incorporated into this judgment by reference.



- b. That this Agreed Final Judgment complies with all of the statutory, jurisdictional, and procedural requisites necessary for entry and enforcement.
- c. That all parties agree to the terms of this Agreed Final Judgment, request the Court to approve it, and waive the right to appeal its validity.
- d. That Harris County, Texas and the State of Texas do not waive their right to demand additional enforcement of the Texas Solid Waste Disposal Act or take any other action against the defendant to enforce the laws and regulations of Harris County, the State of Texas, or the United States, except with regard to violations raised in Plaintiff's Second Amended Petition.
- e. That the occurrence of any violation is disputed and the entry of this Agreed Final Judgment shall not constitute an admission by the defendants of any violation alleged in the Plaintiff's Second Amended Petition, nor of any statute, rule or ordinance.
- f. The defendants agree to waive Texas Rules of Civil Procedure 681 through 689.

### **3. Civil Penalties**

The Court ORDERS that Harris County, Texas and the State of Texas shall have and recover from Steven M. Polotko, All Wood Recycling, Inc., and Nicholas P. Polotko the sum of TWENTY-TWO THOUSAND SEVEN HUNDRED FIFTY DOLLARS AND NO CENTS (\$22,750.00) in civil penalties. These penalties shall be divided equally between Harris County and the State of Texas. Payment is due on or before the date the Court signs this judgment. Each payment shall be made by cashier's check as follows:

Payment to Harris County shall be made by check in the amount of ELEVEN THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS AND NO CENTS (\$11,375.00) payable to "Harris County, Texas for deposit into the General Fund." This check

shall be delivered to Clarissa Kay Bauer at the address noted beneath her signature line on or before the date the Court signs this judgment.

Payment to the State of Texas shall be made by cashier's check in the amount of ELEVEN THOUSAND THREE HUNDRED SEVENTY-FIVE DOLLARS AND NO CENTS (\$11,375.00) payable to "The State of Texas." This check shall be delivered to the Chief of the Natural Resources Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

#### **4. Attorney's Fees**

It is further ORDERED that Steven M. Polotko, All Wood Recycling, Inc., and Nicholas P. Polotko shall pay to the State of Texas attorney's fees in the amount of FIVE THOUSAND FIVE HUNDRED AND NO CENTS (\$5,500.00). Payment is due on or before the date the Court signs this judgment.

It is further ORDERED that from Steven M. Polotko, All Wood Recycling, Inc., and Nicholas P. Polotko shall pay to Harris County, Texas attorney's fees in the amount of SIX THOUSAND SEVEN HUNDRED FIFTY AND NO CENTS (\$6,750.00). This check shall be delivered to Clarissa Kay Bauer at the address noted beneath her signature line on or before the date the Court signs this judgment.

#### **5. Injunctive Relief**

Defendants Steven M. Polotko, All Wood Recycling, Inc., and Nicholas P. Polotko (Defendants) are hereby ORDERED to:

- a. Comply with the attached fire prevention and suppression plan (fire plan) for the site. This plan is attached as Exhibit "B" and incorporated into this judgment by reference;
- b. Refrain from all outdoor burning at the site, except as provided by the attached fire plan;

- c. Allow representatives from Harris County and the Texas Commission on Environmental Quality access to the site at any time to monitor compliance with state law and with this Agreed Final Judgment;
- d. Grind the remaining unprocessed wood material<sup>2</sup> no later than 30 days from the date this Agreed Final Judgment is signed. For every day that Houston Intercontinental Airport receives ¼ inch of rain in a 24 hour period, a day shall be added to this deadline;
- e. Do not accept additional wood product at the site until at least 50% of the existing unprocessed wood material presently at the site is mulched; and
- f. Comply with all applicable state, federal, and local regulations.

#### **6. Other Relief**

Defendants Steven M. Polotko, All Wood Recycling, Inc., and Nicholas P. Polotko shall pay the District Clerk's filing fee in this case. A cashier's check for the District Clerk's filing fee in the amount of ONE HUNDRED SEVENTY-FOUR DOLLARS AND NO CENTS (\$174.00) shall be made payable to Harris County District Clerk, Charles Bacarisse. This check shall be delivered to Clarissa Kay Bauer at the address noted beneath her signature line on or before the date the Court signs this judgment.

IT IS FURTHER ORDERED that Harris County and the State of Texas are allowed such writs of execution and other processes as may be necessary in the collection or enforcement of this judgment.

IT IS FURTHER ORDERED that Plaintiffs are not required to file a bond in support of this order.

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<sup>2</sup> The "unprocessed wood material" refers to the approximately 150,000 cubic yard pile of wood located at the eastern third of the site.

The Court denies all relief not granted in this judgment.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
JUDGE PRESIDING

AGREED AND ENTRY  
REQUESTED:

MICHAEL A. STAFFORD  
County Attorney

By: \_\_\_\_\_

Clarissa Kay Bauer  
SBN 01920350  
1310 Prairie, Suite 940  
Houston, Texas 77002  
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Fax (713) 755-2680

**ATTORNEYS FOR PLAINTIFF  
HARRIS COUNTY, TEXAS**

JOHN CORNYN  
Attorney General of Texas

HOWARD G. BALDWIN, JR.  
First Assistant Attorney General

JEFFREY S. BOYD  
Deputy Attorney General for Litigation

KAREN W. KORNELL  
Assistant Attorney General  
Chief, Natural Resources Division

By: \_\_\_\_\_

Terry Norris Peterson  
Assistant Attorney General  
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Natural Resources Division  
P.O. Box 12548, Capitol Station  
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(512) 463-2012  
Fax (512) 320-0911

**ATTORNEYS FOR THE STATE OF TEXAS**

**Law Office of Steven E. Thompson, P.C.**

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Steven E. Thompson  
SBN 00785102  
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Houston, Texas 77007  
Telephone: (713) 463-8085  
Fax: (713) 463-6674

**ATTORNEYS FOR STEVEN M. POLOTKO  
AND ALL WOOD RECYCLING, INC.**

---

Nicholas P. Polotko

**Pro Se Defendant**

THE STATE OF TEXAS   §  
  §  
COUNTY OF HARRIS   §

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 the \_\_\_\_ day of \_\_\_\_\_, 2002, with the following members present, to-wit:

Robert Eckels	County Judge
El Franco Lee	Commissioner, Precinct No. 1
James Fonteno	Commissioner, Precinct No. 2
Steve Radack	Commissioner, Precinct No. 3
Jerry Eversole	Commissioner, Precinct No. 4

and the following members absent, to-wit: \_\_\_\_\_, constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING COUNTY ATTORNEY TO FILE  
SUIT AND AUTHORIZING EXPENSES**

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

	Yes	No	Abstain
Judge Eckels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Lee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Fonteno	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Radack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Eversole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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, the Harris County Public Health & Environmental Services Department, Pollution Control Division has conducted multiple investigations at or near the property at 12000 Duncan Road (Precinct 4) in Harris County;

Whereas, John Duncan, Christopher Duncan, and Kevin Tousant are illegally storing or disposing of municipal solid waste storage 12000 Duncan Road;

Whereas John Duncan owns the property at 12000 Duncan Road;

Whereas, the Public Health & Environmental Services Department, Pollution Control Division has determined that the storage or disposal of municipal solid waste at this location is in violation of TEX. HEALTH AND SAFETY CODE ANN. §361.001-361.754 (Vernon 1992 & Supp. 2001) and the regulations promulgated under that statute;

Whereas, the Public Health & Environmental Services Department, Pollution Control Division has requested that the County Attorney take the necessary legal action to obtain an injunction compelling compliance and to obtain civil penalties for legal violations which have occurred on or near the property at 12000 Duncan Road;

THEREFORE, IT IS ORDERED that the County Attorney is hereby authorized, on behalf of Harris County, to file suit against John Duncan, Christopher Duncan, and Kevin Tousant, as well as any other person or entity that has caused, suffered, allowed, or permitted the offending activities, and any operator, owner, successor in title or interest to same, for civil penalties, injunctive and other relief, as is authorized by the above referenced as well as any additional environmental, public health and welfare protection laws;

IT IS FURTHER ORDERED AND RESOLVED 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, and to finally dispose of the suit by obtaining compliance and civil penalties within the statutorily specified range and as authorized by applicable law, as he deems appropriate. Pursuant to TEX. CIV. PRAC. & REM. CODE ANN. §6.001, the County Attorney shall be exempt from filing a bond to obtain an injunction; and

IT IS FURTHER ORDERED that the County Attorney is authorized to hire expert witnesses and other consultants and to expend the amount of \$5,000.00 as initial expenses in the case, which amount includes, but is not limited to, funds for court reporter fees, expert fees and expenses, discovery costs, and any other reasonable and necessary expense. All fund transfers necessary to accomplish the above are hereby ordered to be made. All such costs and fees should be charged to the general fund.

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and the</b>	§	
	§	
<b>STATE OF TEXAS,</b>	§	
<b>acting by and through the</b>	§	
<b>Texas Commission on</b>	§	<b>HARRIS COUNTY, TEXAS</b>
<b>Environmental Quality,</b>	§	
<b>a Necessary and Indispensable</b>	§	
<b>Party</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>JOHN ADAMS, CHRISTOPHER</b>	§	
<b>ADAMS, and KEVIN TOUSANT</b>	§	
<b>Defendants</b>	§	<b>_____ JUDICIAL DISTRICT</b>

**PLAINTIFF’S ORIGINAL PETITION FOR INJUNCTION**

Harris County, Texas, plaintiff, complains of John Adams, Christopher Adams, and Kevin Tousant (collectively as “Defendants”). John Adams is the owner of property known as 12000 Duncan Road. John Adams, along with Christopher Adams and Kevin Tousant are engaged in the illegal processing and storage of municipal solid waste, including wood, sheetrock, crushed construction waste and scrap tires, at 12000 Duncan Road, in violation of the Texas Solid Waste Disposal Act. To protect individuals who live in close proximity to this site, and to protect the land and air near this location, Harris County seeks a temporary injunction and a permanent injunction prohibiting any further disposal of waste at the site and requiring the removal of the existing illegally stored material. Harris County also seeks civil penalties, attorney’s fees, and court costs. For 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 Tx.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 is Harris County, Texas, a political subdivision of the State of Texas.

### **DEFENDANTS**

2.2 Defendant John Adams is the owner is the owner of the property at 12000 Duncan Road. He may be served at 12000 Duncan Road, Houston, Texas 77066.

2.3 Defendant Christopher Adams operates an illegal solid waste storage and processing facility at 12000 Duncan Road. He may also be served at 12000 Duncan Road, Houston, Texas 77066.

2.4 Defendant Kevin Tousant operates an illegal solid waste storage and processing facility at 12000 Duncan Road. He may be served at 13319 Chaston Drive Houston, Texas 77041.

### **NECESSARY AND INDISPENSABLE PARTY**

2.5 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**

Applicable Law- Texas Health & Safety Code-Texas Solid Waste Disposal Act

4.1 The Texas Solid Waste Disposal Act is found in Chapter 361 of the Texas Health & 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.<sup>1</sup> Section 361.024 of the Health & Safety Code allows the TCEQ to adopt rules consistent with the Texas Solid Waste Disposal Act.

4.2 30 T.A.C. section 330.4(a) is a rule adopted by the TCEQ under this authority. Under 30 T.A.C. 330.4(a), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of municipal solid waste without authorization from the TCEQ.

4.3 Defendants John Adams, Christopher Adams, and Kevin Tousant have violated section 330.4(a) by storing, processing and/or disposing a large volume of municipal solid waste, including wood, sheetrock, crushed construction waste and scrap tires without authorization from the TCEQ. This illegal activity has been documented by officials from the Harris County Pollution Control Division on at least the following dates: March 1, 2000, March 15, 2000, April 4, 2000, April 25, 2000, July 13, 2000, September 1, 2000, February 16, 2001, April 6, 2001, July 2, 2001, October 11, 2001, October 30, 2001, November 6, 2001, November 26, 2001, December 12, 2001, January 18, 2002, May 15, 2002, June 28, 2002, July 17, 2002, August 28, 2002, and September 13, 2002.

## **V. INJUNCTIVE RELIEF**

5.1 In the preceding paragraphs, Harris County has indicated specific dates of violations where violations have been documented by Harris County personnel. Harris County is of the belief that the solid waste violations have occurred not only on these specific days, but on days between the documented dates. Harris County is entitled to injunctive relief from continuing violations or the threat of violations.

5.2 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 defendants, their employees, agents, successors, and or

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<sup>1</sup> Tex. Health & Safety Code § 361.002 (Vernon 1992 & Supp. 2001).

assigns, from future violation of the Texas Health and Safety Code and the regulations promulgated thereunder.

5.3 Specifically, Harris County seeks a temporary injunction order directing defendants to immediately:

- (a) stop accepting any solid waste at 12000 Duncan Road;
- (b) remove all existing solid waste from the site and take it to a TCEQ permitted solid waste landfill or process all wood material at the site into recycled product within ninety days; and
- (c) provide the Harris County Attorney with copies of disposal receipts, manifests, tipping fee receipts, or other proof of lawful disposal for all solid waste.

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 361 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.

6.2 As mentioned in section 5.1 of this petition, Plaintiff has alleged certain particular dates of violations. In addition to these specific dates, Plaintiff will prove continuing daily violations where appropriate.

## **VII. PRAYER**

WHEREFORE, Plaintiff prays:

1. that this Court issue a show cause order requiring Defendants 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;
2. that citation issue in due form of law against Defendants;

3. that upon failure by the Defendants to show cause why an injunction should not be issued, that the Court grant a temporary injunction against Defendants, in favor of Plaintiff, for the injunctive relief as aforesaid;
4. that at the show cause hearing the Court set a date certain for trial for a permanent injunction as authorized by law. At said trial Plaintiff will request that a permanent injunction issue to compel Defendants to comply with Chapter 361 of the Texas Health and Safety Code and the rules and regulations adopted pursuant to that chapter;
5. that upon final trial in this cause, the Court grant civil penalties against Defendants, within the range allowed by law, as requested above;
6. 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 Defendants; and
7. the Court grant such other and further relief to which Plaintiff may be justly entitled.

MICHAEL A. STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Robert J. Stokes, Jr.  
Assistant County Attorney  
Environmental Division  
SBN 00791738  
1310 Prairie, Ste. 940  
Houston, Texas 77002  
(713) 755-8284  
FAX - (713) 755-2680

ATTORNEY FOR PLAINTIFF  
HARRIS COUNTY, TEXAS

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and the</b>	§	
	§	
<b>STATE OF TEXAS,</b>	§	
<b>acting by and through the</b>	§	
<b>Texas Commission on</b>	§	<b>HARRIS COUNTY, TEXAS</b>
<b>Environmental Quality,</b>	§	
<b>a Necessary and Indispensable</b>	§	
<b>Party</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>JOHN ADAMS, CHRISTOPHER</b>	§	
<b>ADAMS, and KEVIN TOUSANT</b>	§	
<b>Defendants</b>	§	<b>80<sup>th</sup> JUDICIAL DISTRICT</b>

**AGREED ORDER GRANTING TEMPORARY INJUNCTION**

On this day Plaintiff, Harris County (“the County”) and Defendants Larry John Adams, Christopher Adams, and Kevin Tousant (collectively “defendants”), submitted to the Court this agreed temporary injunction.

**I.** THE PARTIES ANNOUNCE TO THE COURT THAT AN AGREEMENT HAS BEEN REACHED REGARDING THE TEMPORARY RELIEF SOUGHT BY PLAINTIFF AGAINST DEFENDANTS. Upon considering the agreement of the parties, the Court agrees that the agreed temporary injunction should be granted and Defendants, their agents, servants, and employees must immediately comply with the following.

**II.** IN AGREEING TO THIS TEMPORARY INJUNCTION THE PARTIES HEREBY STIPULATE TO THE FOLLOWING:

- A. that they understand and agree to the terms of this temporary injunction;
- B. that this temporary injunction complies with all jurisdictional and procedural requisites necessary for entry and enforcement;
- C. that the parties agree to the terms of this agreed temporary injunction and waive the right to appeal its validity;
- D. that the occurrence of any violation is in dispute, and the entry of this Order shall not constitute an admission by Defendants of any violation alleged;

E. that all parties agree that they actively participated in the negotiations leading up to this agreed temporary injunction; that they understand the duties placed upon them by it; that they have read the terms of this agreed injunction; and that the agreed temporary injunction is specific in its terms and complies with Rule 683 of the Texas Rules of Civil Procedure;

F. that Defendants are willing and able to comply with the terms of the agreed temporary injunction and waive the necessity of the issuance and service of a writ of injunction pursuant to Rule 689 of the Texas Rules of Civil Procedure;

G. that this agreed temporary injunction is enforceable pursuant to Rule 692 of the Texas Rules of Civil procedure.

**III. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTION IS GRANTED AND APPROVED AND DEFENDANTS, JOHN ADAMS, CHRISTOPHER ADAMS, AND KEVIN TOUSANT, THEIR OFFICERS, AGENTS, SERVANTS, EMPLOYEES AND LEGAL SUCCESSORS ("DEFENDANTS"), ARE HEREBY IMMEDIATELY ENJOINED AS FOLLOWS:**

A. Defendants are enjoined from causing, suffering, allowing, or permitting any activity of storage, processing, removal, or disposal of any municipal solid waste at the property known as 12000 Duncan Road unless such activity is either authorized by a permit or other authorization from the Texas Commission on Environmental Quality ("TCEQ").

B. Defendants must clean up and remove all municipal solid waste, including but not limited to tree parts, scrap wood, demolition and construction debris, scrap vehicles and scrap tires, from the property at 12000 Duncan within 30 days from the date this temporary judgment is signed by the Court. All waste should be removed to an authorized TCEQ disposal or recycling facility.

C. Defendants may not unload any solid waste at 12000 Duncan Road unless such activity is either authorized by a permit or other authorization from the TCEQ.

D. Defendants may not demolish mobile homes of any type on the property at 12000 Duncan Road.

E. Defendants shall prevent the discharge of fluids from motor vehicles on the ground at 12000 Duncan Road. Any spill of fluids on the ground at 12000 Duncan Road that may exist currently or that may occur in the future must be cleaned up immediately.

F. Defendants may store, but not process, solid waste in roll off boxes on the property at 12000 Duncan Road for no more than ten consecutive days. Any stored roll off box must be fully covered at all times to prevent rainwater from mixing with stored waste.

**IV.** IT IS FURTHER ORDERED that Plaintiff, pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 6.001 (Vernon 2001), are not required to file a bond in support of this order.

**V.** IT IS FURTHER ORDERED that trial on the merits of this cause is set for the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

SIGNED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

MICHAEL A. STAFFORD  
Harris County Attorney

---

ROBERT J. STOKES, JR.  
State Bar No. 00791738  
Assistant County Attorney  
Environmental Division  
1310 Prairie, Ste. 940  
Houston, Texas 77002  
(713) 755-8284  
FAX (713) 755-2680

ATTORNEYS FOR HARRIS COUNTY

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Attorney General of Texas

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First Assistant Attorney General

JEFFREY S. BOYD  
Deputy Attorney General for Litigation

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Chief, Natural Resources Division

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ATTORNEYS FOR THE STATE OF TEXAS

---

John Adams  
12000 Duncan Road  
Houston, Texas 77066  
(281) 583-9011  
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DEFENDANT, PRO SE

---

Christopher Adams  
12000 Duncan Road  
Houston, Texas 77066  
(832) 347-5125  
FAX (281) 866-9374

DEFENDANT, PRO SE

---

Kevin Tousant  
13319 Chaston Drive  
Houston, Texas 77041  
(832) 347-5129  
FAX (281) 866-9374

DEFENDANT, PRO SE



No. 2002-56801

**HARRIS COUNTY, TEXAS**  
**Plaintiff**

**and the**

**STATE OF TEXAS,**  
**acting by and through the**  
**Texas Commission on**  
**Environmental Quality,**  
**a Necessary and Indispensable**  
**Party**

**v.**

**JOHN ADAMS, CHRISTOPHER**  
**ADAMS, and KEVIN TOUSANT**  
**Defendants**

§ **IN THE DISTRICT COURT OF**  
§  
§  
§  
§  
§ **HARRIS COUNTY, TEXAS**  
§  
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§  
§  
§  
§  
§  
§ **80<sup>th</sup> JUDICIAL DISTRICT**

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

On this day Plaintiffs, Harris County (“the County”) and the State of Texas (“the State”), by and through the Texas Commission on Environmental Quality (“TCEQ”), a necessary and indispensable party to this action, and Defendants Larry John Adams, Christopher Adams, and Kevin Tousant (collectively “Defendants”), submitted to the Court this Agreed Final Judgment and Permanent Injunction (“Judgment”).

This suit was filed by the County alleging violations by Defendants of the Texas Solid Waste Disposal Act. Defendants allegedly violated regulations promulgated under Chapter 361 of the Texas Health & Safety Code. Defendants allegedly violated 30 T.A.C. 330.4(a) by causing, suffering, allowing, or permitting the storage or processing of municipal solid waste without authorization from the Texas Natural Resource Conservation Commission. Defendants’ alleged activities occurred at 12000 Duncan Road, Houston, Harris County, Texas. Pursuant to Section 7.353 of the Texas Water Code, the State of Texas, acting by and through the Texas Natural Resource Conservation Commission, was joined in this action as a necessary and indispensable party and was aligned as a party-plaintiff.

The Court has reviewed this Judgment and finds that it is proper and consistent with the intent and purposes of the Texas Water Code and the Texas Health & Safety Code and the regulations promulgated thereunder. The Court approves it in all respects.

**IN AGREEING TO THIS FINAL JUDGMENT THE PARTIES HEREBY STIPULATE TO THE FOLLOWING:**

- A. that they understand and agree to the terms of this Judgment;
- B. that this Judgment represents a compromise and settlement of all matters placed in

issue by Plaintiff's Original Petition for Injunction;

C. that this Judgment complies with all statutory, jurisdictional, and procedural requisites necessary for entry and enforcement; and

D. that the parties agree to the terms of this Judgment and waive the right to appeal its validity.

## **I. INJUNCTIVE PROVISIONS**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT PLAINTIFF'S REQUEST FOR INJUNCTION IS GRANTED AND APPROVED AND DEFENDANTS, LARRY JOHN ADAMS, CHRISTOPHER ADAMS, AND KEVIN TOUSANT, AND THEIR OFFICERS, AGENTS, SERVANTS, EMPLOYEES AND LEGAL SUCCESSORS ("DEFENDANTS"), ARE HEREBY ENJOINED AS FOLLOWS:

A. Defendants are enjoined from causing, suffering, allowing, or permitting any activity of storage, processing, removal, or disposal of any municipal solid waste at the property known as 12000 Duncan Road unless such activity is either authorized by a permit or other authorization from the Texas Commission on Environmental Quality ("TCEQ").

B. Defendants may not unload any solid waste at 12000 Duncan Road unless such activity is either authorized by a permit or other authorization from the TCEQ.

C. Defendants may not demolish mobile homes of any type on the property at 12000 Duncan Road.

D. Defendants shall prevent the discharge of fluids from motor vehicles on the ground at 12000 Duncan Road. Any spill of fluids on the ground at 12000 Duncan Road that may exist currently or that may occur in the future must be cleaned up immediately.

E. Defendants may store, but not process, solid waste in roll off boxes on the property at 12000 Duncan Road for no more than ten consecutive days. Any stored roll off box must be fully covered at all times to prevent rainwater from mixing with stored waste.

## **II. CIVIL PENALTIES**

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants shall pay civil penalties in the total amount of ONE THOUSAND FIVE HUNDRED DOLLARS AND 00/100ths (\$1,500.00) as follows:

A. Harris County shall have and recover from each of the three Defendants the sum of TWO HUNDRED FIFTY DOLLARS AND 00/100ths (\$250.00) in civil penalties. Defendants shall make payment to Harris County, Texas, by cashier's check payable to "Harris County, Texas, for deposit into the General Fund." The check shall be delivered to the Chief of the Environmental Division of the Harris County Attorney's Office, 1310 Prairie, Suite 940, Houston, Texas 77002 within seven days of the date this judgment is signed by the

Court. The check shall reflect that payment is in re: CA No. 02ENV0067–Adams.

B. The State of Texas shall have and recover from each of the three Defendants the sum of TWO HUNDRED FIFTY DOLLARS AND 00/100ths (\$250.00) in civil penalties. Defendants shall make payment to the State of Texas by cashier's check payable to "State of Texas." The check shall be delivered to the Chief of the Natural Resources Division, Attorney General's Office, P.O. Box 12548, Austin, Texas 78711-2548 within seven days of the date this judgment is signed by the Court. The check shall reflect that payment is in re: A.G. No. 021701230.

### **III. ATTORNEYS' FEES**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants shall pay attorney's fees in the total amount of ONE THOUSAND FIVE HUNDRED DOLLARS AND 00/100ths (\$1,500.00), as follows:

A. Harris County shall have and recover from each of the three Defendants attorney's fees in the amount of TWO HUNDRED FIFTY DOLLARS AND 00/100ths (\$250.00) each. Payment shall be due and delivered in the same manner as the civil penalty payment as set forth in paragraph I.A.

B. The State of Texas shall have and recover from each of the three Defendants attorney's fees in the amount of TWO HUNDRED FIFTY DOLLARS AND 00/100ths (\$250.00). Payment shall be due and delivered in the same manner as the civil penalty payment as set forth in paragraph I.B.

### **IV. COURT COSTS**

IT IS FURTHER ORDERED that Defendants shall pay all court costs payable to "Charles Bacarisse, District Clerk." Each of the three Defendants shall make a payment of SEVENTY-SIX DOLLARS and 67/100ths (\$76.67). Payment shall be delivered to the address listed above in paragraph IV.A within seven days of the Judgment Date.

### **V. IMMEDIATE EFFECT; ENFORCEMENT; FUTURE LIABILITY**

IT IS FURTHER ORDERED:

- A. that this Judgment be effective immediately upon signing by the Court;
- B. that Plaintiffs be allowed such writs and processes as may be needed for the enforcement of this Judgment;
- C. that nothing in this Judgment shall in any way limit or lessen Defendants' responsibilities or potential liabilities for future violations of the Texas Health & Safety Code or the Texas Water Code or for violations of any other laws; and

D. that all relief not specifically granted herein is denied.

Signed on this the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

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JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

MICHAEL A. STAFFORD  
Harris County Attorney

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DEFENDANT, PRO SE

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DEFENDANT, PRO SE

**Elements**  
**Illegal Discharge Into or Adjacent to Waters of the State (Water Code 26)**

Texas Water Code § 26.121(a)(1) states:

1. Except as authorized by the TCEQ, no person may
2. discharge
3. sewage, municipal waste, recreational waste, agricultural waste, or industrial waste
4. into or adjacent to
5. any water in the state.

THE STATE OF TEXAS     §  
COUNTY OF HARRIS     §

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 the \_\_\_\_ day of \_\_\_\_\_, 2004, with the following members present, to-wit:

Robert Eckels	County Judge
El Franco Lee	Commissioner, Precinct No. 1
Sylvia Garcia	Commissioner, Precinct No. 2
Steve Radack	Commissioner, Precinct No. 3
Jerry Eversole	Commissioner, Precinct No. 4

and the following members absent, to-wit: \_\_\_\_\_, constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING COUNTY ATTORNEY TO FILE SUIT AND AUTHORIZING EXPENSES**

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

	Yes	No	Abstain
Judge Eckels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Lee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia		<input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
Comm. Radack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Eversole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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, the Harris County Public Health & Environmental Services Department, Pollution Control Division has conducted multiple investigations at or near the property at 15535 Market Street in Harris County (Precinct 2);

Whereas, Mystik Transport Inc., which is formerly known as Gulf Transportation, Inc., operates a trucking business at the property at 15535 Market Street;

Whereas, Southwest Texas Solvents operates a chemicals sales and storage business at the property at 15535 Market Street;

Whereas the Public Health & Environmental Services Department, Pollution Control Division has determined that Mystik Transport Inc., Gulf Transportation Inc., and/or Southwest Texas Solvents have operated at this location in violation of TEX. WATER CODE ANN. §26.001-26.460 (Vernon 1992 & Supp. 2002) and the regulations promulgated under that statute;

Whereas the Public Health & Environmental Services Department, Pollution Control Division has determined that Mystik Transport Inc., Gulf Transportation Inc., and/or Southwest Texas Solvents have operated at this location in violation of TEX. HEALTH & SAFETY CODE ANN. §361.001-361.754 (Vernon 1992 & Supp. 2002) and the regulations promulgated under that statute; and

Whereas, the Public Health & Environmental Services Department, Pollution Control Division has requested that the County Attorney take the necessary legal action to obtain an injunction compelling compliance and to obtain civil penalties for the violations which have occurred on or near the property at 15535 Market Street.

THEREFORE, IT IS ORDERED that the County Attorney is hereby authorized, on behalf of Harris County, to file suit against Mystik Transport Inc., Gulf Transportation Inc., and Southwest Texas Solvents, as well as any other person or entity that has caused, suffered, allowed, or permitted the offending activities at or near 15535 Market Street, and any operator, owner, successor in title or interest to same, for civil penalties and injunctive and other relief, as is authorized by the above referenced as well as any additional environmental, public health and welfare protection laws.

IT IS FURTHER ORDERED AND RESOLVED 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, and to finally dispose of the suit by obtaining compliance and civil penalties within the statutorily specified range and as authorized by applicable law, as he deems appropriate. Pursuant to TEX. CIV. PRAC. & REM. CODE ANN. §6.001, the County Attorney shall be exempt from filing a bond to obtain an injunction; and

IT IS FURTHER ORDERED that the County Attorney is authorized to hire expert witnesses and other consultants and to expend the amount of \$5,000.00 as initial expenses in the case, which amount includes, but is not limited to, funds for court reporter fees, expert fees and expenses, discovery costs, and any other reasonable and necessary expense. All fund transfers necessary to accomplish the above are hereby ordered to be made. All such costs and fees should be charged to the general fund.



No. \_\_\_\_\_

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and the</b>	§	
	§	
<b>STATE OF TEXAS</b>	§	
<b>acting by and through the</b>	§	
<b>Texas Commission on Environmental</b>	§	
<b>Quality, a Necessary and</b>	§	<b>HARRIS COUNTY, TEXAS</b>
<b>Indispensable Party</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>GULF TRANSPORTATION, INC.,</b>	§	
<b>MYSTIK TRANSPORT, INC., and</b>	§	
<b>SIDNEY BALDON, individually and</b>	§	
<b>d/b/a L &amp; S DIESEL REPAIR &amp;</b>	§	
<b>PARKING, Defendants</b>	§	<b>_____ JUDICIAL DISTRICT</b>

**PLAINTIFF’S ORIGINAL PETITION FOR INJUNCTION**

Harris County, Texas, Plaintiff, complains of Gulf Transportation, Inc. (“Gulf”), Mystik Transport, Inc. (“Mystik”), and Sidney Baldon, individually and d/b/a L & S Diesel Repair & Parking (“L & S”), Defendants. Gulf previously operated a trucking business at 15535 Market Street in Harris County. Mystik took over Gulf’s operations at the site and currently operates a trucking business there. Sidney Baldon, individually and d/b/a L & S Diesel Repair & Parking, operates a truck repair business at 15535 Market Street. All three defendants have illegally discharged industrial waste from the site into or adjacent to waters of the state on numerous occasions and have failed to comply with a general storm water permit that governs their activity. This activity is in violation of the Texas Water Code and the Texas Solid Waste Disposal Act as well as the Harris County Storm Water Regulations. These violations present a threat to the surrounding environment.

To protect the land and water nearby the site from additional pollution and contamination, Harris County seeks a temporary injunction prohibiting any further illegal discharges from the site at 15535 Market Street. Harris County also seeks permanent

injunctive relief and civil penalties for these violations of the Texas Water Code, the Texas Health and Safety Code, and the Harris County Storm Water Regulations. For cause of action, Plaintiff respectfully shows the Court:

### **I. AUTHORITY TO SUE**

1.1 Plaintiff Harris County will conduct discovery under level 2 of Tx.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 and civil penalties under the authority granted in section 7.351 of the Texas Water Code.

### **II. PARTIES TO THIS SUIT**

#### **PLAINTIFF**

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

#### **DEFENDANTS**

2.2 Defendant Gulf Transportation, Inc., is a Texas corporation. It may be served by serving its registered agent, Sidney B. Baldon, at 15535 Market Street, Channelview, Texas 77530.

2.3 Defendant Mystik Transport, Inc., is a Texas corporation. It may be served by serving its registered agent, James H. Burnett, at 1082 R. 2900, Cleveland, Texas 77327.

2.4 Sidney Baldon is an individual who does business as L & S Diesel Repair & Parking and who may be served with process at his residence located at 13834 Victoria Street, Houston, Texas 77015.

## NECESSARY AND INDISPENSABLE PARTY

2.5 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 and civil penalties pursuant to section 7.351 of the Texas Water Code and section 3.01 of the Harris County Storm Water Regulations. 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 AT 15535 MARKET STREET**

#### Applicable Law- Texas Water Code

4.1 Under section 26.121(c) of the Water Code, no person may cause, suffer, allow, or permit the discharge of a waste or the performance of an activity in violation of Chapter 26 of the Water Code or of any permit or order of the TCEQ. Section 26.121(a) prohibits the discharge of industrial waste<sup>1</sup> into or adjacent to a water in the state<sup>2</sup> without authorization by the TCEQ. Section 26.121(b) prohibits the discharge of other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity, causes, continues to cause, or will cause pollution of any of the water in the state.

4.2 Defendant Gulf Transportation has caused, suffered, allowed or permitted the discharge of industrial waste from 15535 Market Street in violation of sections 26.121(a) and/or 26.121(b) on the following dates: August 25, 1998, September 22, 2000, August 28, 2001, November 6, 2001, February 5, 2002, and April 26, 2002.

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<sup>1</sup> "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade or business.

<sup>2</sup> "Water in the state" is defined at §26.001(5) of the Water Code as: groundwater, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

4.3 Defendant Mystik Transport has caused, suffered, allowed or permitted the discharge of industrial waste from 15535 Market Street in violation of sections 26.121(a) and/or 26.121(b) on the following dates: February 20, 2003 and March 4, 2003.

4.4 Defendant Sidney Baldon, individually and d/b/a L & S Diesel Repair & Parking, has caused, suffered, allowed or permitted the discharge of industrial waste from 15535 Market Street in violation of sections 26.121(a) and/or 26.121(b) on the following dates: March 4, 2003.

Applicable Law- Texas Health & Safety Code

4.5 In addition and in the alternative to the foregoing, Defendants' discharges have violated the Texas Solid Waste Disposal Act. The Texas Solid Waste Disposal Act is found in chapter 361 of the Texas Health & 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.<sup>3</sup> Section 361.024 of the Health & Safety Code allows the TCEQ to adopt rules consistent with the Texas Solid Waste Disposal Act.

4.6 Under 30 T.A.C. § 335.4, 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 the waters in the state without obtaining specific authorization for such a discharge from the TCEQ.

4.7 Defendant Gulf Transportation has caused, suffered, allowed or permitted the collection, handling, storage, processing, or disposal of industrial solid waste from 15535 Market Street into or adjacent to the waters in the state without authorization by the TCEQ. This illegal activity has taken place on at least the following dates: August 25, 1998, September 22, 2000, August 28, 2001, November 6, 2001, February 5, 2002, and April 26, 2002.

4.8 Defendant Mystik Transport has caused, suffered, allowed or permitted the collection, handling, storage, processing, or disposal of industrial solid waste from 15535 Market Street into or adjacent to the waters in the state without authorization by

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<sup>3</sup> Tex. Health & Safety Code § 361.002 (Vernon 1992 & Supp. 2001).

the TCEQ. This illegal activity has taken place on at least the following dates: February 20, 2003 and March 4, 2003.

4.9 Defendant Sidney Baldon, individually and d/b/a L & S Diesel Repair & Parking, has caused, suffered, allowed or permitted the collection, handling, storage, processing, or disposal of industrial solid waste from 15535 Market Street into or adjacent to the waters in the state without authorization by the TCEQ. This illegal activity has taken place on at least the following dates: February 20, 2003 and March 4, 2003.

4.10 Under 30 T.A.C. § 335.62, a person who generates a solid waste must determine if that waste is hazardous pursuant to 30 T.A.C. § 335.504 and must classify any nonhazardous waste under the provisions of subchapter R of chapter 335 of Title 30 of the Texas Administrative Code. On August 26, 2002, Defendant Gulf Transportation had seven drums of unclassified waste on site in violation of § 335.62.

Applicable Law- Storm Water Regulations

4.11 The purpose of the laws and regulations described below is the protection of water quality. Federal and local authorities have determined that, absent preventative measures, storm water runoff from industrial sites is a source of water pollution. The goal of the state law and regulations is to prevent pollutant-laden sediments at industrial sites from entering waters of the state and of the United States and degrading water quality.

4.12 Pursuant to TEXAS LOCAL GOV'T CODE ANN. § 423.00 (Vernon Supp. 2002) Harris County promulgated the Regulations of Harris County, Texas for Storm Water Quality Management (October 1, 2001) ("Harris County Regulations"). The County was directed to promulgate storm water regulations in the first instance by the United States Environmental Protection Agency ("EPA") under the terms of Harris County's own federal permit governing its municipal separate storm sewer system (basically, the County system of creeks, channels, ditches, and storm sewers into which storm water flows and from which water is discharged into waters of the United States). Authority to promulgate the regulations is set forth in TEX. LOC. GOV'T CODE ANN. § 423 (Vernon Supp. 2002).

4.13 With respect to industrial site discharges, the County's rules incorporate EPA's requirements. *See* Harris County Regulations, Part D. The EPA requires the operators of industrial sites to obtain either an individual permit for the site, or coverage for the site under the general permit governing the "industrial" category of discharges. Storm Water Discharges, 40 C.F.R. § 122.26(c) (2001). The Storm Water General Permit for Industrial Activities ("General Permit") in Texas is known as TPDES permit No. TXR05000. Harris County Regulations, Part D, §1.02, provides that any violation of a site's individual or general permit is also a violation of County regulations.

4.14 In order to obtain coverage under the general permit (and thereby obviate the need to obtain an individual permit), an owner or operator must submit a Notice of Intent (NOI). The general permit requires that a Storm Water Pollution Prevention Plan ("SWPPP") be prepared and adhered to at each site. The SWPPP mandates pollution prevention measures and controls that include good housekeeping measures, spill prevention, response measures, and best management practices.

4.15 Defendants Gulf Transportation and Mystik Transport have submitted a NOI for coverage under TPDES General Permit TXR050000 to the Texas Natural Resource Conservation Commission (known currently as TCEQ) on or about October 16, 2001. The TCEQ issued the facility TPDES Permit # TXR050836 indicating that the facility is conditionally covered under the General Permit. However, the two entities have never developed a SWPPP for the site. Defendant Gulf Transportation was found to be in violation of the General Permit for not having and implementing a SWPPP on November 6, 2001, February 5, 2002, and April 26, 2002. Defendant Mystik Transport was found to be in violation of the General Permit for not having and implementing a SWPPP on February 20, 2003.

## **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 Defendants Gulf Transportation, Mystik Transport, and Sidney Baldon, individually and d/b/a L & S Diesel Repair & Parking, their employees, agents, successors, and or assigns, from future violation of the Texas Water Code, the Texas Health and Safety Code, the Harris County Storm Water Regulations, and the regulations promulgated thereunder.

5.2 Specifically, Harris County seeks a temporary injunction directing Defendants, their employees, agents, successors, and assigns to immediately refrain from causing, suffering, allowing, or permitting the discharge of industrial waste or solid waste into or adjacent to the waters of the state without the written authorization of the TCEQ. Harris County also seeks an injunction directing Defendants to develop and comply with a SWPPP at their facility.

5.3 Plaintiff also seeks permanent injunctive relief to ensure no further violations of the Texas Water Code, the Texas Health and Safety Code, and the Harris County Storm Water Regulations by Defendants at 15535 Market Street.

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 26 of the Water Code or any rule, order, or permit relating to any matter within the TCEQ's jurisdiction 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.

6.2 Under section 7.102 of the Texas Water Code, a person or entity who violates any provision of Chapter 361 of the Health and Safety Code or any rule, order, or permit relating to any matter within the TCEQ's jurisdiction 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.

6.3 Under TEX. LOCAL GOV'T CODE ANN. § 423.003 (Vernon Supp. 2002), a person or entity who violates the Harris County Storm Water Regulations is subject to a civil penalty of up to \$1000.00 per act and day of violation.

**VIII. PRAYER**

WHEREFORE, Plaintiff prays:

1. that this Court issue a show cause order requiring Defendants 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;
2. that citation issue in due form of law against Defendants;
3. that upon failure by the Defendants to show cause why an injunction should not be issued, the Court grant a temporary injunction against Defendants, in favor of Plaintiff, for the injunctive relief as aforesaid;
4. that at the show cause hearing the Court set a date certain for trial for a permanent injunction as authorized by law. At said trial Plaintiff will request that a permanent injunction issue to compel Defendants to comply with Chapter 26 of the Texas Water Code, Chapter 361 of the Texas Health & Safety Code, and the Harris County Storm Water Regulations and the rules and regulations promulgated thereunder;
5. that upon final trial in this cause, the Court grant civil penalties against Defendants, within the range allowed by law, as requested above;
6. 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 Defendants; and
7. the court grant such other and further relief to which plaintiff may be justly entitled.

MIKE STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Robert J. Stokes, Jr.  
Assistant County Attorney  
Environmental Division  
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ATTORNEY FOR PLAINTIFF



HARRIS COUNTY, TEXAS

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and the</b>	§	
	§	
<b>STATE OF TEXAS</b>	§	
<b>acting by and through the</b>	§	
<b>Texas Commission on Environmental</b>	§	
<b>Quality, a Necessary and</b>	§	<b>HARRIS COUNTY, TEXAS</b>
<b>Indispensable Party</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>GULF TRANSPORTATION, INC.,</b>	§	
<b>MYSTIK TRANSPORT, INC., and</b>	§	
<b>SIDNEY BALDON, individually and</b>	§	
<b>d/b/a L &amp; S DIESEL REPAIR &amp;</b>	§	
<b>PARKING, Defendants</b>	§	<b>80<sup>th</sup> JUDICIAL DISTRICT</b>

**AGREED ORDER GRANTING TEMPORARY INJUNCTION**

On this day Plaintiff, Harris County (“the County”) and Defendants, Gulf Transportation Inc., Mystik Transport, Inc., and Sidney Baldon, individually and d/b/a L & S Diesel Repair & Parking, submitted to the Court this agreed temporary injunction.

**I.** THE PARTIES ANNOUNCE TO THE COURT THAT AN AGREEMENT HAS BEEN REACHED REGARDING THE TEMPORARY RELIEF SOUGHT BY PLAINTIFF AGAINST DEFENDANTS. Upon considering the agreement of the parties, the Court finds and concludes that the agreed temporary injunction should be granted and Defendants, their agents, servants, and employees must comply with and complete the items enumerated herein at the property at issue in this lawsuit.

**II.** IN AGREEING TO THIS TEMPORARY INJUNCTION THE PARTIES HEREBY STIPULATE TO THE FOLLOWING:

- A. that they understand and agree to the terms of this temporary injunction;
- B. that this temporary injunction complies with all statutory, jurisdictional, and procedural requisites necessary for entry and enforcement;
- C. that the parties agree to the terms of this agreed temporary injunction and waive the right to appeal its validity;

D. that all parties agree that they actively participated in the negotiations leading up to this agreed temporary injunction; that they understand the duties placed upon them by it; that they have read the terms of this agreed order; and that the agreed temporary injunction is specific in its terms and complies with Rule 683 of the Texas Rules of Civil Procedure;

E. that Defendants are willing and able to comply with the terms of the agreed temporary injunction and waive the necessity of the issuance and service of a writ of injunction pursuant to Rule 689 of the Texas Rules of Civil Procedure;

F. that this agreed temporary injunction is enforceable pursuant to Rule 692 of the Texas Rules of Civil procedure.

**III. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT PLAINTIFF'S APPLICATION FOR TEMPORARY INJUNCTION IS GRANTED AND APPROVED AND DEFENDANTS, GULF TRANSPORTATION INC., MYSTIK TRANSPORT, INC., AND SIDNEY BALDON, INDIVIDUALLY AND D/B/A L & S DIESEL REPAIR & PARKING, THEIR AGENTS, ASSIGNS, SERVANTS AND EMPLOYEES ("DEFENDANTS"), ARE HEREBY MANDATORILY ENJOINED AS FOLLOWS:**

A. Within two days of the date this Agreed Order Granting Temporary Injunction is signed by the Court, ("Order date"), Defendants shall vacuum all currently existing freestanding or ponding liquid at the property at 15535 Market Street ("the site"), including but not limited to any liquid in bermed areas. As soon as practicable, but not later than thirty days from the Order date, Defendants shall conduct a waste classification on any liquid collected, and dispose of that liquid properly according to the classification;

B. As soon as practicable, but not later than thirty days from the Order date, Defendants shall remove all visibly contaminated soils from the site by placing them in a covered container and properly disposing of those soils offsite after making a waste classification;

C. As soon as practicable, but not later than thirty days from the Order date, each Defendant shall determine its hazardous waste generator status and store, characterize, and dispose of all hazardous and solid waste properly;

D. Within fourteen days of the Order date, Defendant Mystik Transport must submit a Notice of Change ("NOC") to the TCEQ for its TPDES storm water permit;

E. As soon as practicable, but not later than thirty days from the Order date, Defendant Mystik Transport must develop and implement a storm water pollution prevention plan ("SWPPP") for its operations;

F. Within two days of the Order date, Defendants shall provide disposal records to Harris County Pollution Control and the TCEQ for all waste disposed of offsite in the three prior years;

G. If Defendants fail to comply with any of the deadlines listed in paragraphs A-F above, Defendants shall immediately cease all business operations at the site until such time as they do comply with those provisions, unless the parties have agreed in writing to extend the deadline based upon the need for more time given the scope of the work involved;

H. Defendants must not discharge any truck wash waters or sewage from the site, unless that discharge is permitted or allowed by the TCEQ;

I. Defendants must immediately clean up any future spills and legally dispose of the spilled material offsite after making a waste classification; and

J. Within fourteen days of their generation, Defendants shall provide copies of all disposal records to Harris County Pollution Control and the TCEQ for all waste disposed of offsite during the pendency of this Agreed Order Granting Temporary Injunction.

K. Defendant will hire a third party environmental consultant, subject to approval by HCPC, to assist it in bringing the site into compliance with the terms of this Order.

**IV.** IT IS FURTHER ORDERED that plaintiff, pursuant to TEX.CIV.PRAC & REM.CODE.ANN. § 6.001 (Vernon 1988 & Supp. 2002), and Texas Water Code § 7.351 and § 7.032 (Vernon 1988 & Supp. 2002), is not required to file a bond in support of this order.

**V.** IT IS FURTHER ORDERED that trial on the merits of this cause is set for the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

SIGNED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
PRESIDING JUDGE

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

MIKE STAFFORD  
Harris County Attorney

WARE, SNOW FOGEL &  
JACKSON, L.L.P.

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ATTORNEY FOR PLAINTIFF  
HARRIS COUNTY

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ATTORNEYS FOR THE STATE OF TEXAS

**Elements**  
**Air Quality – Clean Air Act (Texas Health & Safety Code 382)**

30 Texas Administrative Code §111.201 is a rule adopted by the TCEQ pursuant to Texas Health & Safety Code 382. It states:

1. No person may
2. cause, suffer, allow, or permit
3. any outdoor burning
4. within the State of Texas
5. except as provided by this subchapter or by orders or permits of the TCEQ.

**THE STATE OF TEXAS §**  
**COUNTY OF HARRIS §**

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 the \_\_\_\_\_ day of \_\_\_\_\_, 2004, with the following members present, to-wit:

Robert Eckels  
El Franco Lee  
Sylvia Garcia  
Steve Radack  
Jerry Eversole

County Judge  
Commissioner, Precinct No.1  
Commissioner, Precinct No.2  
Commissioner, Precinct No.3  
Commissioner, Precinct No.4

and the following members absent, to-wit: \_\_\_\_\_, constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING SUIT TO COMPEL  
COMPLIANCE WITH TRENCH BURNER REGULATIONS**

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

	Yes	No	Abstain
Judge Eckels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Lee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Radack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Eversole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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, the Harris County Public Health & Environmental Services Department, Pollution Control Division has conducted multiple investigations arising from complaints involving trench burner operations at the intersections of Huffmeister and Spring Road, (Precinct 3) Morton Road and Fry Road (Precinct 3), Tomball Parkway and High Life Drive (Precinct 4), Greenhouse Road and Old Greenhouse Road (Precinct 4), Beltway 8 and Gessner (Precinct 4) and in the 800 Block of Baker Road (Precinct 4), and the 20500 Block of Parkrow (Precinct 3), in Harris County,

Whereas, Addicks Services, Inc. owned trench burners and operated them in violation of the State's environmental laws and regulations at the locations that were the subject of these investigations and during the times Pollution Control conducted those investigations,

Whereas, the Public Health & Environmental Services Department, Pollution Control Division has determined that Addicks Services, Inc. has caused, suffered, allowed or permitted violations of 30 TEXAS ADMINISTRATIVE CODE § 106.496 et seq. and 30 T.A.C. 101.4

Whereas, the Public Health & Environmental Services Department, Pollution Control Division has requested that the County Attorney take the necessary legal action to obtain an injunction compelling compliance and to obtain civil penalties for legal violations

THEREFORE, IT IS ORDERED that the County Attorney is hereby authorized, on behalf of Harris County, to file suit against Addicks Services, Inc. as well as any other person or entity that has caused, suffered, allowed, or permitted the offending activities, and any operator, owner, successor in title or interest to same, for civil penalties, injunctive and other relief, as is authorized by the above referenced laws as well as any additional environmental, public health and welfare protection laws;

IT IS FURTHER ORDERED AND RESOLVED 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, and to finally dispose of the suit by obtaining compliance and civil penalties within the statutorily specified range and as authorized by applicable law, as he deems appropriate. Pursuant to TEX. CIV. PRAC. & REM. CODE ANN. §6.001, the County Attorney shall be exempt from filing a bond to obtain an injunction; and

IT IS FURTHER ORDERED that the County Attorney is authorized to hire expert witnesses and other consultants and to expend the amount of \$5,000.00 as initial expenses in the case, which amount includes, but is not limited to, funds for court reporter fees, expert fees and expenses, discovery costs, and any other reasonable and necessary expense.

All fund transfers necessary to accomplish the above are hereby ordered to be made.

All such costs and fees should be charged to the general fund.



<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and the</b>	§	
	§	
<b>STATE OF TEXAS,</b>	§	
<b>acting by and through the</b>	§	
<b>Texas Commission on</b>	§	
<b>Environmental Quality,</b>	§	
<b>a Necessary and Indispensable</b>	§	<b>HARRIS COUNTY, TEXAS</b>
<b>Party</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>ADDICKS SERVICES, INC. d/b/a ASI</b>	§	
<b>a Texas Corporation,</b>	§	
<b>Defendant</b>	§	<b>133<sup>rd</sup> JUDICIAL DISTRICT</b>

**PLAINTIFF’S FOURTH AMENDED PETITION FOR PERMANENT INJUNCTION**

Harris County, Texas (“Plaintiff”) complains of Addicks Services, Inc. d/b/a ASI (“Defendant”). Defendant is engaged in the business of land clearing throughout Harris County. As part of its land clearing business, Defendant uses a device known as a trench burner to burn the land clearing debris so that it may avoid bringing the debris to a landfill. On numerous occasions, Defendant has used trench burners improperly so that its operation is in violation of the law. Defendants land clearing operations also generated huge quantities of dust. These violations threaten human health and the environment because they contribute directly to Harris County’s air pollution problems and impact the surrounding community. Defendant’s illegal activities violate the Texas Clean Air Act. Through this lawsuit, Harris County seeks injunctive relief to prevent future violations of the law by the Defendant. The requested injunctive relief is to require Defendant to immediately comply with all regulations governing outdoor burning or trench burning in Harris County. Continued violations of the Texas Clean Air Act by Defendant 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 is Harris County, Texas, a political subdivision of the State of Texas.

#### **DEFENDANT**

2.2 Defendant Addicks Services, Inc is a Texas Corporation that does business in Texas as ASI. It may be served with citation by serving its registered agent for service of process David B. Norris at 6705 Cinco Ranch Road #1, Houston, Texas 77036.

#### **NECESSARY AND INDISPENSABLE PARTY**

2.3 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 ADDICKS SERVICES, INC.

#### 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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

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

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<sup>1</sup> TEX. HEALTH & SAFETY CODE ANN. § 382.002 (Vernon 1992).

<sup>2</sup> TEX. HEALTH & SAFETY CODE ANN. § 382.085(a) (Vernon 1992 & Supp. 2003).

<sup>3</sup> TEX. HEALTH & SAFETY CODE ANN. § 382.085(b) (Vernon 1992 & Supp. 2003).

<sup>4</sup> TEX. HEALTH & SAFETY CODE ANN. § 382.017 (Vernon 1992 & Supp. 2003).

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 has no air permit for their air emissions from its burning, but has attempted to operate its trench burners under a Permit by Rule, effective for the dates set forth herein, and located at 30 T.A.C. § 106.496.

4.6 Finally, 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.<sup>5</sup>

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

4.7 On or about January 30, 2002 at or near the intersection of Huffmeister and Spring Roads, in Harris County, Texas, while operating a trench burner, Defendant

- (a) added material to the trench such that the material was not consumed by 6:00 p.m., and
- (b) operated the trench burner without the blower remaining on until all material was consumed so that any remaining material in the trench did not smoke when the blower was turned off.

These acts constitute violations of violation of 30 T.A.C. 106.496(5) and 30 T.A.C. 101.4.

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<sup>5</sup> 30 TEX. ADMIN. CODE § 101.4 (West 2003).

4.8 On or about April 20, 2002 at or near the 800 block of Baker Road in Harris County, Texas, Defendant's land clearing operations discharged dust in such concentration and duration as to interfere with the normal use and enjoyment of property in violation of 30 T.A.C. 101.4 and in violation of chapter 382 of the Texas Health & Safety Code.

4.9 On or about May 11, 2002 at or near the 800 block of Baker Road in Harris County, Texas, Defendant's land clearing operations discharged dust in such concentration and duration as to interfere with the normal use and enjoyment of property in violation of 30 T.A.C. 101.4 and in violation of chapter 382 of the Texas Health & Safety Code.

4.10 On or about May 21, 2002 at or near the intersection of Morton and Fry Road in Harris County, Defendant, while operating a trench burner

- (a) failed to maintain a written record or log of the hours of operation of their trench burner at the site;
- (b) added material to the trench so that it was stacked above the air curtain;  
and
- (c) failed to post a copy of the operating instructions for the trench burner at the burn site.

These acts constitute violations of 30 T.A.C. 106.496(4), (10) and (13).

4.11 On or about November 9, 2002, at or near the 800 Block of Baker Road in Harris County, Texas, Defendant discharged dust and fly ash from its operations in such concentration and duration as to interfere with the normal use and enjoyment of property in violation of 30 T.A.C. 101.4 and in violation of chapter 382 of the Texas Health & Safety Code.

4.12 On or about April 15, 2003 at or near the Tomball Parkway, north of Highlife Drive in Harris County, Texas, the Defendant, while operating a trench burner

- (a) added material to the trench so that it was stacked above the air curtain, and
- (b) operated a trench burner where the maximum length of the burning area as measured along the bottom of the trench exceed by more than five feet the length of the manifold.

These acts constitute violations of 30 T.A.C. 106.496(3) and (10).

4.13 On or about August 12, 2003, at or near the intersection of Greenhouse and Old Greenhouse Road in Harris County, Texas, Defendant, while operating a trench burner

- (a) failed to maintain a written record or log of the hours of operation of the trench burner at the site, and
- (b) failed to keep material that was not being worked or material being stockpiled to be burned at a later date at least 75 feet from the trench.

These acts constitute violations of 30 **T.A.C.** 106.496(4) and (9).

4.14 On or about October 8, 2003, at or near the 20500 block of Parkrow, in Houston, Harris County, Texas, Defendant while operating a trench burner

- (a) discharged ash and soot from its trench burner operations in such concentration and duration as to interfere with the normal use and enjoyment of property, and
- (b) failed to remove ash generated by the operation of a trench burner in such a manner as to minimize the ash from becoming airborne.

These acts constitute violations 30 T.A.C. 101.4 and 30 T.A.C. 106.496(11).

4.15 On days other than April 20, 2002, May 11, 2002 and November 9, 2002, the Defendant's operations at or near the 800 Block of Baker Road in Harris County, Texas, Addicks Services, Inc. discharged dust from its land clearing operations in such concentration and

duration as to interfere with the normal use and enjoyment of property in violation of 30 T.A.C. 101.4. Each of these days of continuing violation constitutes a separate violation.

4.16 On days other than October 8, 2003, the Defendant's operations at or near the 20500 block of Parkrow, in Houston, Harris County, Texas, Addicks Services, Inc. discharged ash and soot from its trench burner operations in such concentration and duration as to interfere with the normal use and enjoyment of property in violation of 30 T.A.C. 101.4. Each of these days of continuing violation constitutes a separate violation.

## **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, its 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, its 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:

1. 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;
2. that citation issue in due form of law against Defendant;
3. that upon final trial a permanent injunction should issue against Defendant, in favor of Plaintiff, for the injunctive relief as aforesaid;
4. that upon final trial in this cause, the Court grant civil penalties against Defendant, within the range allowed by law, as requested above;
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
6. the Court grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

MIKE STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Rock W. A. Owens  
Senior Assistant County Attorney  
Compliance Division  
SBN 15382100  
1310 Prairie, Ste. 940  
Houston, Texas 77002  
(713) 755-5908  
FAX - (713) 755-2680



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 \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Notary Public, State of Texas

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and the</b>	§	
	§	
<b>STATE OF TEXAS,</b>	§	
<b>acting by and through the</b>	§	
<b>Texas Commission on</b>	§	
<b>Environmental Quality,</b>	§	
<b>a Necessary and Indispensable</b>	§	<b>HARRIS COUNTY, TEXAS</b>
<b>Party</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>ADDICKS SERVICES, INC. d/b/a ASI</b>	§	
<b>a Texas Corporation,</b>	§	
<b>Defendant</b>	§	<b>133<sup>rd</sup> JUDICIAL DISTRICT</b>

**AGREED ORDER GRANTING TEMPORARY INJUNCTION**

On this day Plaintiffs, Harris County (“the County”) and the State of Texas (“the State”), by and through the Texas Commission on Environmental Quality (“the TCEQ”), a necessary and indispensable party to this action, and Addicks Services, Inc., d/b/a ASI hereinafter sometimes referred to as “Defendant”, submitted to the Court this Agreed Temporary Injunction.

**I. THE PARTIES ANNOUNCE TO THE COURT THAT AN AGREEMENT HAS BEEN REACHED REGARDING THE TEMPORARY RELIEF SOUGHT BY PLAINTIFFS AGAINST DEFENDANT, ADDICKS SERVICES, INC.** Upon considering the agreement of the parties, the Court agrees that the agreed temporary injunction should be granted and Defendant, its agents, servants, and employees must immediately comply with the following.

**II. IN AGREEING TO THIS TEMPORARY INJUNCTION THE PARTIES HEREBY STIPULATE TO THE FOLLOWING:**

- A. that they understand and agree to the terms of this temporary injunction;
- B. that this temporary injunction complies with all jurisdictional and procedural requisites necessary for entry and enforcement;
- C. that the parties agree to the terms of this agreed temporary injunction and waive the right to appeal its validity;

D. that the occurrence of any violation is in dispute, and the entry of this Order shall not constitute an admission by Defendant of any violation alleged and Defendant reserves its' rights to contest and defend the allegations in Plaintiffs' Original Petition upon final trial and expressly denies Plaintiffs' rights to affirmative relief with the exception of any issue related to the validity or enforceability of this Temporary Injunction.

E. that all parties agree that they actively participated in the negotiations leading up to this Agreed Temporary Injunction; that they understand the duties placed upon them by it; that they have read the terms of this agreed injunction; and that the agreed temporary injunction is specific in its terms and complies with Rule 683 of the Texas Rules of Civil Procedure;

F. that Defendant is willing and able to comply with the terms of the Agreed Temporary Injunction and waives the necessity of the issuance and service of a writ of injunction pursuant to Rule 689 of the Texas Rules of Civil Procedure;

G. that this Agreed Temporary Injunction is enforceable pursuant to Rule 692 of the Texas Rules of Civil Procedure.

**III. IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT PLAINTIFFS' APPLICATION FOR TEMPORARY INJUNCTION IS GRANTED AND APPROVED AND DEFENDANT, ADDICKS SERVICES, INC., ITS AGENTS, SERVANTS, EMPLOYEES LEGAL SUCCESSORS AND ANY PERSON ACTING IN CONCERT WITH THE DEFENDANT ARE HEREBY IMMEDIATELY TEMPORARILY ENJOINED AS FOLLOWS:**

A. Defendant, Addicks Services, Inc. is temporarily enjoined from violating 30 T.A.C. § 101.4, including while operating a trench burner under the terms of a permit or the Texas Commission on Environmental Quality Permit by Rule provisions of 30 T. A. C. § 106.496.

B. Defendant, Addicks Services, Inc. is temporarily enjoined from conducting trench burning operations in a manner that violates the Texas Commission on Environmental Quality Permit by Rule provisions of 30 T.A.C. § 106.496. A true and correct copy of 30 T.A.C. § 106.496 is attached to this Temporary Injunction as "Exhibit A".

C. Defendant, Addicks Services, Inc.. is temporarily enjoined from outdoor burning, whether conducted under the terms of a permit or the Texas Commission on Environmental Quality Permit by Rule provisions of 30 T.A.C. § 106.496, in a manner that violates 30 T.A.C. § 111.201.

D. Defendant, Addicks Services, Inc. is temporarily enjoined from conducting earth-moving operations that result in the violation of the provisions of 30 T.A.C. § 101.4.

**IV.** IT IS FURTHER ORDERED that Plaintiff, pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 6.001 (Vernon 2001), are not required to file a bond in support of this Order.

**V.** IT IS FURTHER ORDERED that trial on the merits of this cause is set for the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

SIGNED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE AND ENTRY REQUESTED:

MIKE STAFFORD  
Harris County Attorney

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ROCK W. A. OWENS.  
State Bar No. 15382100  
Senior Assistant County Attorney  
Environmental Division  
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ATTORNEYS FOR HARRIS COUNTY

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ATTORNEY FOR DEFENDANT,  
ADDICKS SERVICES, INC.

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and the</b>	§	
	§	
<b>STATE OF TEXAS,</b>	§	
<b>acting by and through the</b>	§	
<b>Texas Commission on</b>	§	
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<b>a Necessary and Indispensable</b>	§	<b>HARRIS COUNTY, TEXAS</b>
<b>Party</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>JAMES WARD d/b/a EXCALIBUR</b>	§	
<b>CONSTRUCTION, LTD. and</b>	§	
<b>MICHAEL J. WARD d/b/a</b>	§	
<b>EXCALIBUR CONSTRUCTION</b>	§	
<b>Defendant, Excalibur Construction, Ltd.</b>	§	<b>165<sup>th</sup> JUDICIAL DISTRICT</b>

**HARRIS COUNTY’S BRIEF ON ITS APPLICATION FOR  
TEMPORARY INJUNCTION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Harris County through Mike Stafford, the County Attorney of Harris County, respectfully submits this brief describing the law applicable to statutory injunctive relief.

Harris County contends that the defendants operate a company that is engaged in land clearing and earth hauling that takes place in Harris County, Texas. The company uses a device called a “trench burner” also known as an “air-curtain destructor” to dispose of land clearing debris by burning. Harris County contends that on numerous occasions the defendants failed to use the trench burner in accordance with the 30 T.A.C § 106.496 and in violation of 30 T.A.C. §§ 101.4 and 111.201. Harris County further contends that the defendants have operated earth

hauling and sweeping equipment in violation of 30. T.A.C. § 101.4 and 30 T.A.C. § 330.5(c). Harris County seeks injunctive relief from the continuing violations or threat of violations of these regulations. Pursuant to Section 7.351 of the Texas Water Code, this Court may grant Harris County, without bond or other undertaking, any prohibitory or mandatory injunction the facts of this case warrant. Based upon the defendants continued course of conduct and violations of the law, plaintiffs seek temporary injunctive relief to restrain the defendants, their officers, agents, employees, successors, and assigns, from any future violations of the Texas Clean Air Act.

### **Statutory Basis For Temporary Restraining Order**

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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> TEX. HEALTH & SAFETY CODE ANN. § 382.002 (Vernon 1992).

<sup>2</sup> TEX. HEALTH & SAFETY CODE ANN. § 382.085(a) (Vernon 1992 & Supp. 2003).

<sup>3</sup> TEX. HEALTH & SAFETY CODE ANN. § 382.085(b) (Vernon 1992 & Supp. 2003).

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

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.

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. Defendants 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.

Finally, 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.<sup>5</sup>

### **Statutory Language Supercedes Common Law Requirements**

In an application for statutory or regulatory injunctive relief, Harris County has a significantly lower burden of proof than under a traditional common law-type request for temporary injunction.

When the government, as the applicant for injunctive relief, relies on a statute or public health regulation that defines the requirements for that relief, the express language of the statute, law or

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<sup>4</sup> TEX. HEALTH & SAFETY CODE ANN. § 382.017 (Vernon 1992 & Supp. 2003).

<sup>5</sup> 30 TEX. ADMIN. CODE § 101.4 (West 2003).



regulation, supercedes the common law requirements for injunctive relief. The applicant does not have to show irreparable harm, a lack of adequate remedy at law, or a balancing of the equities *Rio Grande Oil Co. v. State*, 539 S.W.2d 917 (Tex. Civ. App.--Houston [1<sup>st</sup> Dist.] 1976, writ ref'd n.r.e.).

### **The Status Quo Is The Condition Of Non-Violation Of Law**

Where the acts that are sought to be enjoined are acts that constitute a violation of law, the status quo to be preserved should be non-violative of that law. Continued violation of the law cannot be permitted. *Houston Compressed Steel Corp. v. State*, 456 S.W.2d 768, 773 (Tex. Civ. App.--Houston [1<sup>st</sup> Dist.] 1970, no writ). See also; *Texas Pet Food, Inc. v. State*, 529 S.W.2d 820, 829 (Tex. Civ. App.--Waco 1975, writ ref'd n.r.e.). Accordingly, in this case, the continuing violation of the licensing requirements for solid waste storage and disposal facilities, which ensure the health, safety and comfort of its residents' should not be considered the status quo, pending a trial on the merits.

### **Duty Of The Court To Restrain Violations**

“In an injunction case wherein the very acts sought to be enjoined are acts which, *prima facie*, constitute the violation of expressed law, the status quo to be preserved should never be a condition of affairs where the respondent would be permitted to continue the acts constituting that violation. In such instances, the status quo to be preserved by temporary injunction is the last actual, peaceable, uncontested status which preceded the pending controversy, and when it is determined that the law is being violated it is the province and the duty of the court to restrain it.” *Houston Compressed Steel Corp. v. State*, 456 S.W.2d 768, 773 (Tex. Civ. App.--Houston [1<sup>st</sup> Dist.] 1970, no writ); *Rattikin Title Co. v. Grievance Committee*, 272 S.W.2d 948 (Tex. Civ. App.--Forth Worth 1954, no writ).

## Summary

1. Harris County is entitled to injunctive relief by alleging and proving violations of 30 T.A.C § 106.496, 30 T.A.C. § 101.4, 30 T.A.C. § 111.201 and 30 T.A.C. § 330.5(c).
2. Since Harris County relies upon public health regulations that define the requirements for injunctive relief, then the express statutory language supercedes the common law requirements for injunctive relief.
3. The status quo sought to be preserved by this application for temporary injunction is the condition of non-violation of the licensing requirements established by 30 T.A.C. §§ 106.496, 101.4, 111.201 and 330.5(c).
4. Upon proving that a public health regulation has been violated and future violation is threatened, it is the duty of the court to restrain it.

Respectfully submitted,

MIKE STAFFORD  
County Attorney

By \_\_\_\_\_  
Rock W. A. Owens  
SBN 15382100  
Senior Assistant County Attorney  
Environmental Division  
1310 Prairie, Suite 940  
Houston, Texas 77002  
(713) 755-5908  
(713) 755-2680 (Fax)

ATTORNEY FOR PLAINTIFF  
HARRIS COUNTY, TEXAS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Harris County's Brief on Its Application for Temporary Injunction was delivered via facsimile transmission to:

RAYMOND H. STAUFFACHER  
908 Town & Country Boulevard, Suite 230  
Houston, Texas 77024-2211  
FAX (713) 365-0005

\_\_\_\_\_  
Rock. W. A. Owens

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and the</b>	§	
	§	
<b>STATE OF TEXAS,</b>	§	
<b>acting by and through the</b>	§	
<b>Texas Commission on</b>	§	
<b>Environmental Quality,</b>	§	
<b>a Necessary and Indispensable</b>	§	<b>HARRIS COUNTY, TEXAS</b>
<b>Party</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>ADDICKS SERVICES, INC. d/b/a ASI</b>	§	
<b>a Texas Corporation,</b>	§	
<b>Defendant</b>	§	<b>133<sup>rd</sup> JUDICIAL DISTRICT</b>

**AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION**

On this day Harris County and the State of Texas (“Plaintiffs”), and Addicks Services, Inc. (Defendant) submitted to the Court this Agreed Final Judgment (“Judgment”).

Plaintiffs commenced the captioned lawsuit alleging Defendant is engaged in the business of clearing land in Harris County, Texas. As part of their land clearing business, Defendant use a device known as a trench burner to burn the land clearing debris so that they may avoid bringing the debris to a landfill. On numerous occasions, the Defendant has used trench burners improperly so that its operations are in violation of the law. These violations threaten human health and the environment because they contribute directly to Harris County’s air pollution problems. Defendant’s illegal activities violate the Texas Clean Air Act. Plaintiffs seek, *inter alia*, civil penalties and permanent injunctive relief.

The Court has reviewed this Judgment and finds that it is proper and consistent with the intent and purposes of the Texas Solid Waste Disposal Act, the Texas Water Code and the

environmental rules and regulations promulgated by Texas Commission on Environmental Quality and Harris County. The Court approves it in all respects.

IN AGREEING TO THIS JUDGMENT THE PARTIES HEREBY STIPULATE TO THE FOLLOWING:

- A. that they understand and agree to the terms of this Judgment;
- B. that this Judgment represents a compromise and settlement of all matters placed in issue by Plaintiffs and Defendant in the captioned litigation;
- C. that the occurrence of any violation by Defendant is in dispute and the entry of this Judgment shall not constitute an admission by Defendant of any violation alleged by Plaintiffs in the captioned litigation;
- D. that this Judgment complies with all statutory, jurisdictional and procedural requisites necessary for entry and enforcement;
- E. that Plaintiffs and Defendant agree to the terms of this Judgment and waive the right to appeal its validity;
- F. that Plaintiffs and Defendant agree that they actively participated in the negotiations leading up to this Judgment, they understand the duties placed upon them by it, they have read the terms of this Judgment, and that the Judgment is specific in its terms and complies with Rule 683 of the Texas Rules of Civil Procedure;
- G. that Defendant is willing and able to comply with the terms of the Judgment and waives the necessity of the issuance and service of a writ of injunction pursuant to Rules 688 and 689 of the Texas Rules of Civil Procedure; and
- H. that this Judgment is enforceable pursuant to Rule 692 of the Texas Rules of Civil Procedure.

## I. GENERAL PROVISIONS

THE FOLLOWING GENERAL PROVISIONS ARE ORDERED, ADJUDGED, AND DECREED AS THE JUDGMENT OF THIS COURT.

A. This Judgment finally disposes of all claims in the captioned litigation by Plaintiffs against Defendant.

B. Defendant operates a construction company that employs the use of a trench burner in Harris County, Texas.

C. Where a document or payment is required or permitted to be delivered to the Harris County Attorney's Office, Environmental Division, under the terms of the Judgment, delivery shall constitute and shall require the actual receipt by the Harris County Attorney's Office, Compliance Division, 1310 Prairie, Suite 940, Houston, Texas 77002, ATTN: Rock W.A. Owens, before the time for completion of the action.

D. Where a document or payment is required or permitted to be delivered to the Office of Attorney General, Natural Resources Division, under the terms of the Judgment, delivery shall constitute and shall require the actual receipt by the Office of Attorney General, Natural Resources Division, 300 West 15<sup>th</sup> Street, 10<sup>th</sup> Floor, Clements Building, Austin, Texas 78701, ATTN: Karen W. Kornell, referenced to Attorney General Number \_\_\_\_\_, before the time for completion of the action.

E. This Judgment shall be effective immediately upon signing by the Court.

F. Plaintiffs shall be allowed such process and writs as may be reasonable or necessary for the enforcement of this Judgment unless specifically provided otherwise herein.

G. Nothing in this Judgment shall in any way limit or lessen Defendant's responsibilities or potential liabilities for future violations of the Texas Clean Air Act or for

violations of any other laws.

## **II. CIVIL PENALTIES, FEES, AND COSTS**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT THE FOLLOWING CIVIL PENALTIES, ATTORNEY'S FEES, AND COSTS SHALL BE RECOVERED BY PLAINTIFFS FROM AND AGAINST DEFENDANT:

A. A total of THIRTY-FIVE THOUSAND DOLLARS (\$60,000.00), consisting of a civil penalty of FIFTY-FIVE THOUSAND DOLLAR (\$55,000.00), and attorney's fees and costs of FIVE THOUSAND DOLLARS (\$5,000.00) (\$3,000.00 attorneys fees is awarded to Harris County and \$2,000.00 attorneys fees is awarded to the State of Texas), to be paid by DEFENDANT pursuant to the following terms and conditions:

DEFENDANT shall deliver two payments totaling SIXTY THOUSAND DOLLARS (\$60,000.00) to the Harris County Attorney's Office, Compliance Division; on the date the Defendant signs this Judgment. The payments shall be made as follows: THIRTY THOUSAND FIVE HUNDRED DOLLARS (\$30,500.00) to Harris County and TWENTY-NINE THOUSAND FIVE HUNDRED DOLLARS (\$29,500.00) to the State of Texas.

B. Defendant shall bear all costs of court.

## **III. PERMANENT INJUNCTION**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT PLAINTIFFS' APPLICATION FOR AN INJUNCTION IS GRANTED AND APPROVED AND DEFENDANT AND THEIR AGENTS, ASSIGNS, SERVANTS, AND EMPLOYEES, ARE HEREBY IMMEDIATELY MANDATORILY AND PERMANENTLY ENJOINED AS FOLLOWS:

A. Defendant shall comply with all of the provisions of the Texas Clean Air Act, the Texas Water Code and the environmental rules and regulations promulgated by Texas Commission on Environmental Quality more specifically those provisions found at 30 TEX. ADMIN. CODE § 106.496 *et seq.* and 30 TEX. ADMIN. CODE § 101.4.

B. Defendant shall furnish any information requested by the Plaintiffs that may be required by law or relate to statutory and the regulatory provisions referred to in this injunction.

It is further ORDERED that the Clerk of Court issue the writ of injunction in this cause.

Pursuant to Texas Civil Practices and Remedies Code § 6.001, Plaintiffs are not required to file bond in support of this order.

The Court denies all relief not specifically granted in this Judgment.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

---

PRESIDING JUDGE



**APPROVED AND ENTRY REQUESTED:**

MIKE STAFFORD  
Harris County Attorney

By: \_\_\_\_\_

Rock W. A. Owens  
Senior Assistant County Attorney  
Compliance Division  
SBN 15382100  
1310 Prairie, Suite 940  
Houston, Texas 77002  
(713) 755-5908- Telephone  
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**ATTORNEYS FOR PLAINTIFF, HARRIS COUNTY**

GREG ABBOTT  
Attorney General of Texas

BARRY R. McBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

KAREN W. KORNELL  
Assistant Attorney General  
Chief, Natural Resources Division

By: \_\_\_\_\_  
Lisa Richardson  
Assistant Attorney General  
Natural Resources Division  
SBN 00797375  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 463-2012- Telephone  
(512) 320-0911- Facsimile

**ATTORNEYS FOR PLAINTIFF,  
TEXAS COMMISSION  
ON ENVIRONMENTAL QUALITY**

**AGREED:**

---

Charles B. Frye  
Lindeman & Frye  
Attorneys at Law  
State Bar No. 07496250  
808 Travis, Suite 1605  
Houston, Texas 77002  
(713) 236-8700- Telephone  
(713) 229-8031- Facsimile

**ATTORNEYS FOR DEFENDANT,  
ADDICKS SERVICES, INC.**

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Authorized Agent or Officer  
**ADDICKS SERVICES, INC.**

THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

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 the \_\_\_\_ day of \_\_\_\_\_, 2001, with the following members present, to-wit:

Robert Eckels	County Judge
El Franco Lee	Commissioner, Precinct No. 1
James Fonteno	Commissioner, Precinct No. 2
Steve Radack	Commissioner, Precinct No. 3
Jerry Eversole	Commissioner, Precinct No. 4

and the following members absent, to-wit: \_\_\_\_\_, constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING COUNTY ATTORNEY TO FILE  
SUIT AND AUTHORIZING EXPENSES**

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

AYES:  
NAYS:  
ABSTENTIONS:

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, the Harris County Public Health & Environmental Services Department, Pollution Control Division has conducted multiple investigations at or near the property at 4200 Clow Road in Harris County;

Whereas, Lawrence R. Wood, d/b/a Wood Resources, operates a municipal solid waste storage and/or processing facility at 4200 Clow Road;

Whereas, Robert James McAdams and Hugh Pryor McAdams own the property at 4200 Clow Road;

Whereas, a fire has been burning at 4200 Clow Road for approximately one week. The fire is generating large amounts of smoke and is endangering the health and welfare of nearby residents by causing nuisance conditions;

Whereas the Public Health & Environmental Services Department, Pollution Control Division, has determined that the fire is illegal outdoor burning and is in violation of TEX. HEALTH & SAFETY CODE ANN. §382.001-382.143 (Vernon 1992 & Supp. 2001) and the regulations promulgated under that statute;

Whereas the Public Health & Environmental Services Department, Pollution Control Division has determined that Lawrence R. Wood, d/b/a Wood Resources, has also operated at this location in violation of TEX. HEALTH AND SAFETY CODE ANN. §361.001-361.754 (Vernon 1992 & Supp. 2001) and the regulations promulgated under that statute;

Whereas, the Public Health & Environmental Services Department, Pollution Control Division has requested that the County Attorney take the necessary legal action to obtain an injunction compelling compliance and to obtain civil penalties for the violations which have occurred on or near the property at 4200 Clow Road;

Whereas, Commissioners Court has determined that an emergency exists and it is necessary to protect the public health and safety of the residents to immediately file this lawsuit;

THEREFORE, IT IS ORDERED that the County Attorney is hereby authorized, on behalf of Harris County, to file suit against Lawrence R. Wood, d/b/a Wood Resources, Robert James McAdams and Hugh Pryor McAdams, as well as any other person or entity that has caused, suffered, allowed, or permitted the offending activities, and any operator, owner, successor in title or interest to same, for civil penalties, damages, injunctive and other relief, as is authorized by the above referenced as well as any additional environmental, public health and welfare protection laws;

IT IS FURTHER ORDERED AND RESOLVED 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, and to finally dispose of the suit by obtaining compliance and civil penalties within the statutorily specified range and as authorized by applicable law, as he deems appropriate. Pursuant to TEX. CIV. PRAC. & REM. CODE ANN. §6.001, the County Attorney shall be exempt from filing a bond to obtain an injunction; and

IT IS FURTHER ORDERED that the County Attorney is authorized to hire expert witnesses and other consultants and to expend the amount of \$5,000.00 as initial expenses in the case, which amount includes, but is not limited to, funds for court reporter fees, expert fees and expenses, discovery costs, and any other reasonable and necessary expense. All fund transfers necessary to accomplish the above are hereby ordered to be made. All such costs and fees should be charged to the general fund.

No. \_\_\_\_\_

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and</b>	§	
	§	
<b>THE TEXAS NATURAL RESOURCE</b>	§	
<b>CONSERVATION COMMISSION</b>	§	
	§	<b>HARRIS COUNTY, TEXAS</b>
<b>v.</b>	§	
	§	
<b>LAWRENCE WOOD, individually and</b>	§	
<b>dba WOOD RESOURCES, ROBERT</b>	§	
<b>JAMES MCADAMS, and HUGH</b>	§	
<b>PRYOR MCADAMS</b>	§	
<b>Defendants</b>	§	<b>_____ JUDICIAL DISTRICT</b>

**PLAINTIFF’S ORIGINAL PETITION**

1. Harris County, Texas, plaintiff, complains of Lawrence Wood, individually and doing business as Wood Resources, Robert James McAdams, and Hugh Pryor McAdams. Robert James McAdams and Hugh Pryor McAdams are the owners of real property located at 4200 Clow Road in Harris County, Texas.<sup>1</sup> Lawrence Wood operates a wood recycling and disposal facility (Wood Resources) at 4200 Clow Road and stockpiles solid waste at the site, including large quantities of tree parts, mulch, and wood products. The disposal facility violates multiple public health and environmental protection laws, including the Texas Solid Waste Disposal Act.

On November 6, 2001, a huge fire broke out at 4200 Clow Road. This ongoing fire is generating massive quantities of smoke. It creates a public health nuisance and violates multiple public health and environmental protection laws, including the Texas Clean Air Act.

The defendants have failed to extinguish the fire. The Harris County Fire Marshal has issued citations ordering that the fire be extinguished but it continues to burn. To protect individuals who live in close proximity to 4200 Clow Road, and to protect the land and air near this location from additional pollution, Harris County seeks a temporary restraining order, temporary injunction and permanent injunction prohibiting any further outdoor burning at the site. Harris County also seeks

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<sup>1</sup> This real estate is further described in the deed attached as Exhibit “A.”

civil penalties, reimbursement for monies expended in fighting the fire, attorney's fees, and court costs. Harris County will conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.

### **PARTIES**

2. Plaintiff Harris County, Texas, is a political subdivision of the State of Texas and is authorized to bring this action by virtue of authority granted under Texas Water Code §7.351 (Supp. 2001).

3. The Texas Natural Resource Conservation Commission is a necessary and indispensable party to this suit (TNRCC)<sup>2</sup>. Service on the TNRCC is not necessary at this time.

4. Defendant Robert James McAdams is an owner of the real estate at 4200 Clow Road. His whereabouts are unknown at this time.

5. Defendant Hugh Pryor McAdams is an owner of the real estate at 4200 Clow Road. His whereabouts are unknown at this time.

6. Lawrence R. Wood, doing business as Wood Resources, is the operator of a solid waste storage facility at 4200 Clow Road. He may be served at his residence, 17819 Clearlight Lane, Houston, Spring, Texas 77379.

### **JURISDICTION AND VENUE**

7. The Court has jurisdiction over this case pursuant to Texas Water Code §7.351 (Supp. 2001). Venue is proper in Harris County because Harris County is the county in which the violations occurred. Texas Water Code §7.105(c)(Supp. 2001).

### **VIOLATIONS**

#### Outdoor Burning and Statutory Nuisance

8. 30 Texas Administrative Code §111.201 states:

No person may cause, suffer, allow, or permit any outdoor burning within the State of Texas, except as provided by this subchapter or by orders or permits of the commission.

9. The Texas Clean Air Act prohibits any person from emitting air contaminants or performing activities that cause or contribute to air pollution, except as authorized by a rule or order of the TNRCC.<sup>3</sup>

The Act defines air pollution as follows:

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<sup>2</sup> Tex. Water Code Ann. §7.353 (Supp. 2001).

<sup>3</sup> Tex. Health & Safety Code 382.085 (Vernon 1992 & Supp. 2001).



“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.<sup>4</sup>

10. Similarly, 30 Texas Administrative Code 101.4 states:

No person shall discharge 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.

11. The defendants have caused, suffered, allowed, or permitted illegal outdoor burning on January 24, 2000, February 2, 2000, and November 6 – 12, 2001. See Exhibit “B,” affidavit of Patrick Pendleton. Harris County believes that the illegal outdoor burning will continue unless the defendants are required to extinguish the fire. See Exhibit “C,” affidavit of M.J. Kramer.

#### Solid Waste Disposal

12. The Texas Solid Waste Disposal Act and associated Administrative Code provisions regulate solid waste, including tree parts, mulch, and wood.

13. 30 Texas Administrative Code §330.4(a) states:

No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any municipal solid waste unless such activity is authorized by a permit or other authorization ...

14. 30 Texas Administrative Code §330.5(a)(3) states:

...a person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste...in such a manner as to cause the endangerment of human health and welfare or the environment.

15. 30 Texas Administrative Code §332.4(6) governs composting facilities. It states:

Facility operations shall not be conducted in a manner which causes endangerment of human health and welfare, or the environment.

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<sup>4</sup> Tex. Health & Safety Code 382.003(3)(Vernon 1992 & Supp. 2000).

16. The defendants have caused, suffered, allowed, or permitted the illegal storage, processing, and disposal of municipal solid waste at 4200 Clow Road since at least November 30, 1999. They have operated the facility at 4200 Clow Road in a manner which causes endangerment of human health, welfare, and the environment by not limiting the size of the wood piles, by not providing fire breaks to prevent the spread of fire, and by failing to have adequate fire-fighting equipment on site. See Exhibits “B” and “C,” affidavits of Patrick Pendleton and M.J. Kramer.

### **INJUNCTIVE RELIEF**

17. 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 Texas Water Code, this Court may grant Harris County, and the TNRCC, without bond or other undertaking, any prohibitory or mandatory injunction the facts of this case warrant. Harris County seeks injunctive relief prohibiting the defendants, their employees, agents, successors, and assigns, from future violations of the Texas Health and Safety Code and the regulations promulgated thereunder.

18. Specifically, Harris County seeks injunctive relief directing defendants, their employees, agents, successors, and assigns to immediately:

- a. Stop the illegal outdoor burning at 4200 Clow Road by any means necessary including hiring a professional fire-fighting services company,
- b. Stop using 4200 Clow Road as a disposal site for wood products; and
- c. Remove all existing solid waste, including mulch, tree parts, pallets, and wood products from the site.

19. Plaintiff also seeks a temporary injunction and a permanent injunction to ensure no further violations of the Texas Health and Safety Code and the Texas Administrative Code occur at 4200 Clow Road.

### **CIVIL PENALTIES**

20. A person or entity who violates any provision of the Texas Health and Safety Code, or any rule, order, or permit of the TNRCC is subject to a civil penalty of not less than \$50 nor more than \$25,000 for each day of each violation.<sup>5</sup> Each day of a continuing violation is a separate violation.<sup>6</sup>

### **PRAYER**

21. For these reasons, plaintiff prays for the following:

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<sup>5</sup> Texas Water Code §7.102 (Supp. 2001)

<sup>6</sup> Texas Water Code §7.103 (Supp. 2001)

- a) that this Court issue a temporary restraining order against the defendants for the relief requested by the plaintiff;
- b) that citation issue in due form of law against defendants;
- c) that this Court issue a show cause order requiring defendants to appear before the Court to show why they should not be enjoined from further violation of the law, as set out above;
- d) that upon failure by the defendants to show cause why an injunction should not be issued, the Court grant a temporary restraining order against defendants, in favor of plaintiff, for the injunctive relief as requested;
- e) that the Court set a date certain for trial for a permanent injunction as required by Texas Rule of Civil Procedure 683. At trial, plaintiff will request that a permanent injunction issue to compel defendants to comply with state law;
- f) that upon final trial in this cause, the Court grant civil penalties against defendants, within the range allowed by law;
- g) that upon final trial in this cause, the Court grant Harris County and the TNRCC their reasonable attorneys fees and reimbursement for expenses 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,

MICHAEL A. STAFFORD  
Harris County Attorney

By: \_\_\_\_\_

Clarissa Kay Bauer  
SBN 01920350  
1310 Prairie, Suite 940  
Houston, Texas 77002  
(713) 755-8282  
FAX - (713) 755-2681

**ATTORNEYS FOR PLAINTIFF  
HARRIS COUNTY, TEXAS**

**Exhibit B**

VERIFICATION

THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

BEFORE ME, the undersigned authority, on this day personally appeared Patrick Pendleton, who swore on oath the following:

1. I am over 18 years of age. I have never been convicted of a crime, and I am competent to make this affidavit.
2. I am the Solid Waste Supervisor for the Harris County Public Health and Environmental Services Department.
3. On several occasions, including November 30, 1999 and June 5, 2001, I inspected Wood Resources at 4200 Clow Road and determined that the business was improperly storing solid waste, including large quantities of tree parts, mulch, scrap lumber, and other wood waste in violation of the Texas Solid Waste Disposal Act and associated administrative regulations.
4. On several occasions, including January 16, 2000, January 24, 2000, January 27, 2000, and February 2, 2000, I inspected Wood Resources at 4200 Clow Road and determined that outdoor burning occurred at the site in violation of the Texas Clean Air Act and associated administrative regulations.
5. On November 6, 2001, a massive fire broke out at 4200 Clow Road, igniting the waste materials stockpiled at that location. The materials are spread over approximately 10 acres, and are stacked up to 80 feet deep, and up to 20 feet above ground level. The fire continues to burn and it is generating massive amounts of smoke, blanketing the surrounding communities and large parts of Harris County. This smoke is entering residential neighborhoods and creating a public nuisance. This fire violates the Texas Clean Air Act, and associated TNRCC regulations. In addition, the site is in violation of the Texas Solid Waste Disposal Act and numerous public health and environmental protection laws. The defendants have failed to extinguish the fire burning at 4200 Clow Road or to remove the waste materials stockpiled there.

6.

---

Patrick Pendleton

SUBSCRIBED AND SWORN TO BEFORE ME, on this the \_\_\_\_ day of November 2001, to certify which witness my hand and seal of office.

---

NOTARY PUBLIC  
in and for the State of Texas

**Exhibit C**

VERIFICATION

THE STATE OF TEXAS     §  
  §  
COUNTY OF HARRIS     §

BEFORE ME, the undersigned authority, on this day personally appeared M.J. Kramer, who swore on oath the following:

1. I am over 18 years of age. I have never been convicted of a crime, and I am competent to make this affidavit.
2. I am a senior arson investigator for the Harris County Fire Marshal's Office.
3. On November 6, 2001, a massive fire broke out at 4200 Clow Road, Harris County, Texas igniting mulch, scrap lumber, pallets, tree parts and other waste materials stockpiled at that location. The materials are spread over approximately 10 acres, and are stacked up to 80 feet deep, and up to 20 feet above ground level. The fire continues to burn and it is generating massive amounts of smoke, blanketing the surrounding communities and large parts of Harris County. This smoke is entering residential neighborhoods and creating a public nuisance. This fire violates the Texas Clean Air Act, and associated TNRCC regulations. In addition, the site is in violation of the Texas Solid Waste Disposal Act and numerous public health and environmental protection laws. The defendants have failed to extinguish the fire burning at 4200 Clow Road or to remove the waste materials stockpiled there.

\_\_\_\_\_  
M.J. Kramer

SUBSCRIBED AND SWORN TO BEFORE ME, on this the \_\_\_\_ day of November 2001, to certify which witness my hand and seal of office.

\_\_\_\_\_  
NOTARY PUBLIC  
in and for the State of Texas



2. The defendants are ORDERED, no later than 5 p.m. on November 30, 2001, to begin separating into windrows all scrap lumber, including the two large piles of stumps, logs, log sections, and other wood material (approximately 100,000 cubic yards in volume) located at the north end of 4200 Clow Road and outside the north boundaries of the large pit. The windrows can be no higher than 13 feet at the peak of each pile, no wider than 26 feet at the base, and no longer than 150 feet. Windrows must have 29 feet of unobstructed aisle space between them. The defendants shall complete separation of the piles no later than December 12, 2001 at 5 p.m. The defendants are further ORDERED to remove any wood material (from the piles referenced above) not placed into a windrow from the site no later than December 19, 2001 at 5 p.m.

3. The defendants are ORDERED to dispose of any stumps, logs, log sections, branches, municipal solid waste or other unprocessed wood material removed from the site at a Texas Natural Resource Conservation Commission permitted solid waste landfill within 24 hours from the time waste is removed from the site.

4. The defendants are ORDERED, within 10 days of removal of any unprocessed wood material and municipal solid waste described in paragraph 3 above, to provide the Harris County Attorney with copies of disposal receipts, trip tickets, manifests, tipping fee receipts, or other proof of lawful disposal at a landfill or disposal facility.

5. The defendants are ORDERED not to cause, suffer, allow, or permit the discharge of contaminated water<sup>4</sup> from the site, unless authorized by the Texas Natural Resource Conservation Commission. The defendants are further ORDERED to securely impound all water contained in the

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<sup>2</sup> “Clean wood material” is defined as wood or wood materials, including stumps, roots, or vegetation with intact rootball, sawdust, pallets, mulch, and manufacturing rejects.

<sup>3</sup> 4200 Clow Road (sometimes referred to herein as the “site”) is more particularly described in Exhibit “A”.

<sup>4</sup> “Contaminated water” is defined as water containing garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, run-off from fire-fighting operations, or other substances that may cause impairment of the quality of water in the state.



large pit at the site, until treated with approval of the Texas Natural Resource Conservation Commission and removed from the site.

6. The defendants are ORDERED, no later than December 27, 2001 at 5 p.m., to provide to Harris County and the State of Texas a plan, prepared and sealed by a registered professional engineer, to address the removal of municipal solid waste, wood material, and contaminated water remaining at the site. The defendants are ORDERED to secure approval of the plan by Harris County and the State of Texas. Once approved by the County and the State, the parties shall submit the plan to the Court for approval and inclusion in a modified Temporary Injunction.

7. The defendants are ORDERED to immediately stop any outdoor burning at the site.

8. The defendants are ORDERED to allow representatives from Harris County and the Texas Natural Resource Conservation Commission access to the site at any time to monitor compliance with state law and with this temporary injunction.

9. The defendants are ORDERED to secure the site from trespassers, by providing 24-hour security.

10. The defendants are ORDERED to prevent nuisance odor<sup>5</sup> conditions at the site. Any complaint submitted to a governmental agency regarding nuisance odors originating from the site shall be considered a violation of this Order.

11. The defendants are ORDERED to provide access for firefighting apparatus to all parts of the site at all times.

12. The defendants are ORDERED to provide Harris County a weekly written accounting (provided to the Harris County Attorney's Office) of any inert material<sup>6</sup> brought onto the site, the name and

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<sup>5</sup> "Nuisance odor" is defined as 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.

<sup>6</sup> "Inert material" is defined as soil, dirt, clay, gravel, rock, sand, brick, and other natural or man-made nonputrescible material that is essential nonsoluble.

address of the transporter, the volume of the inert material, the nature of the inert material, and where the inert material originated.

13. The defendants are ORDERED to:

Place 100% of all profits generated by disposal, composting, or other operations at the site into the registry of the Court; and

Maintain an accurate accounting system and records, to be approved by the Harris County Auditor, which will clearly and accurately reflect the collection of gross receipts, expenses, and profits; and

Make these accounting records available to Harris County upon request.

The defendants agree that profits are gross receipts less reasonable operating expenses. Operating expenses shall include hard costs such as labor and equipment, but shall not include equipment depreciation. The amount of expenses are subject to court review for reasonableness in the event of a dispute.

IT IS FURTHER ORDERED that plaintiff, pursuant to Texas Water Code §7.032 and §7.351, is not required to file a bond in support of this order.

IT IS FURTHER ORDERED that trial on the merits of this cause is set for the \_\_\_\_\_ day of \_\_\_\_\_, 2002.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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JUDGE PRESIDING

**AGREED:**

MICHAEL A. STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
SBN 01920350  
1310 Prairie, Suite 940  
Houston, Texas 77002  
(713) 755-8282  
Fax (713) 755-2680

ATTORNEYS FOR HARRIS COUNTY

**AGREED:**

\_\_\_\_\_  
Terry O'Rourke  
SBN  
3211 Fairhope Street  
Houston, Texas 77025  
Telephone (713) 664-4128  
Fax (713) 664-8688

ATTORNEY FOR DEFENDANTS LAWRENCE R. WOOD,  
HUGH McADAMS AND ROBERT McADAMS

**Elements**  
**Creation of an Illegal Public Health Nuisance (Texas Health and Safety Code 343)**

Texas Health and Safety Code § 343.011(b) states:

- a. A person may not
- b. cause, permit, or allow
- c. a public nuisance, defined as:
  - (1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;
  - (2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;
  - (3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;
  - (4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment;
  - (5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard;
  - (6) maintaining on abandoned and unoccupied property in a neighborhood a swimming pool that is not protected with: (A) a fence that is at least four feet high and that has a latched gate that cannot be opened by a child; or (B) a cover over the entire swimming pool that cannot be removed by a child;
  - (7) maintaining a flea market in a manner that constitutes a fire hazard;
  - (8) discarding refuse or creating a hazardous visual obstruction on: (A) county-owned land; or (B) land or easements owned or held by a special district that has the commissioners court of the county as its governing body; or
  - (9) discarding refuse on the smaller of: (A) the area that spans 20 feet on each side of a utility line; or (B) the actual span of the utility easement.

CAUSE NO. 93-062260

HARRIS COUNTY	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SANTOS V. VALDEZ	§	
AND JOHN C. VALDEZ	§	
Defendants	§	127 <sup>TH</sup> JUDICIAL DISTRICT

**ORDER TO SHOW CAUSE**

The Motion by Harris County, by and through the Harris County Attorney's Office, seeking to have SANTOS V. VALDEZ and JOHN C. VALDEZ ("Defendants") held and punished for contempt of court in this matter, has been considered and found legally sufficient:

IT IS THEREFORE, ORDERED that Defendants appear before this court at \_\_\_\_\_ o'clock on \_\_\_\_\_, 1994. The purpose of this hearing is to determine whether Defendants should be held in contempt for disobedience of this Court's order for temporary injunction entered and signed on February 10, 1994, in each of the following respects:

A. Defendants have failed and refused to remove from the property known as 12205 Robert E. Lee, Harris County, Texas, the rubbish and refuse required to be removed from the property under the terms of the temporary injunction.

B. Defendants have failed and refused to enclose in weather, rodent and insect-proof buildings or containers the rubbish and refuse kept at 12205 Robert E. Lee, Harris County, Texas, as required in the temporary injunction.

C. Defendants have failed and refused to implement appropriate insect and rodent control measures at 12205 Robert E. Lee, Harris County, Texas, as required by the temporary injunction.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

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JUDGE PRESIDING

February 4, 1993

Honorable County Judge and Commissioners Court  
Harris County Administration Building  
1001 Preston, 9<sup>th</sup> Floor  
Houston, TX 77002

Attn: Mr. Kevin Mauzy  
Deputy County Clerk

Re: Order Authorizing County Attorney to File Suit to Abate a Nuisance and Authorizing Expenses of \$2,500.00

Gentlemen:

For your consideration, enclosed please find a proposed order relating to the above-referenced matter and a request for the approval of \$2,500.00 for litigation expenses.

For some time now, the Harris County Health Department has worked to remedy a nuisance condition existing on certain property owned by John C. Valdez and Santos V. Valdez located at 12205 Robert E. Lee in the unincorporated area of Harris County. Several criminal complaints have been filed, and fines assessed, to no avail.

The Health Department has requested that the County Attorney file a civil suit in order to obtain an injunction requiring compliance with the Nuisance Abatement Act. Hopefully, the property owners will comply with a court order, since failure to do so would subject them to confinement in jail pending their compliance.

Thank you for your consideration of this matter. Should you have any questions, please let me know.

Sincerely,

MIKE DRISCOLL  
County Attorney

By CATHY J. SISK  
Assistant County Attorney

Honorable County Judge and Commissioners Court  
Re: Suit to Abate Nuisance, Valdez Property  
February 4, 1993  
Page Two

APPROVED:

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DAVID HURLEY  
Chief, Trial Bureau

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MARSHA FLOYD  
First Assistant County Attorney



ORDER AUTHORIZING COUNTY ATTORNEY  
TO FILE SUIT TO ABATE A NUISANCE  
AND AUTHORIZING EXPENSES

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 1993, the Commissioners Court of Harris County being duly convened at a regular meeting of the court, upon motion to Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, duly put and carried, adopted the following:

WHEREAS, the Harris County Health Department has determined that a nuisance condition exists on certain property owned by John C. and Santos V. Valdez, located at 12205 Robert E. Lee in Harris County, Texas, in violation of the Nuisance Abatement Act, Chapter 343 of the Texas Health and Safety Code; and

WHEREAS, the violations of the Nuisance Abatement Act include, but are not necessarily limited to: (1) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin or disease-carrying pests, and (2) keeping, storing, or accumulating refuse and rubbish on premises in a neighborhood for more than 10 days in an unenclosed area visible from a public street; and

WHEREAS, despite the issuance of numerous Notices to Abate and the assessment of fines, John C. and Santos V. Valdez continue to cause, permit or allow a nuisance condition to be maintained on their property;

THEREFORE, IT IS ORDERED AND RESOLVED that the Harris County Attorney be and is hereby authorized to file suit against John C. and Santos V. Valdez, as well as any other party who has caused, permitted, or allowed a nuisance condition on, or has an interest in, the property upon which the offending condition exists, for injunctive and other relief as is

authorized by the Texas Health and Safety Code and other environmental, public health and welfare protection laws.

IT IS FURTHER ORDERED AND RESOLVED that the County Attorney is authorized to join in such suit or suits, any and all parties that he deems proper, and to do any and all things reasonable and necessary to require said parties to comply with the law and to take such other steps in the disposition of the suit in accordance with the law as he may deem appropriate.

IT IS FURTHER ORDERED AND RESOLVED that the County Attorney be and is hereby authorized to expend the amount of \$2,500.00 as initial expenses in the case, which amount includes, but is not limited to, funds for court reporter fees, expert expenses, discovery costs, and any other reasonable and necessary expense.

All fund transfers necessary to accomplish the above are hereby ordered to be made.

All such costs and fees should be charged to the general fund.

CAUSE NO. 93-062260

HARRIS COUNTY	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SANTOS V. VALDEZ	§	
AND JOHN C. VALDEZ	§	
Defendants	§	127 <sup>TH</sup> JUDICIAL DISTRICT

**TEMPORARY INJUNCTION**

On this the \_\_\_\_\_ day of February, 1994, came on to be heard Plaintiff's "Petition Seeking Temporary Injunction" in the above styled and numbered cause, wherein Harris County, Texas, is the Plaintiff, and Santos V. Valdez and John C. Valdez, husband and wife, are Defendants.

This Court, finds upon consideration of the County's petition, including the affidavits, supporting materials including any response given by Defendants, that there is sufficient evidence to support the issuance of this Temporary Injunction to constrain Defendants from existing violations and the threat of further violation of Chapter 343 of the Health and Safety Code, and incorporated fully herein:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. HARRIS COUNTY'S PETITION IS GRANTED. The County's verified application, supported by affidavits and evidence, presents specific facts from which it is clear that, absent temporary relief as sought by the County, the Defendants will continue to violate the public nuisance provisions of Chapter 343 of the Health and Safety Code due to the continuous and ongoing presence of rubbish, refuse and conditions which attract or harbor mosquitoes, rodents, vermin or other disease carrying pests, including: piles of used lumber, glass and bottles, scrap

metal, paper products including piles of cardboard boxes, rusted and inoperable vehicles (cars, trucks and heavy equipment), tires, cardboard, a bathtub, a refrigerator, auto parts, plastic jugs and buckets, metal drums, rusted and broken furniture, inoperable water heaters, shopping carts and other miscellaneous household refuse such as window blinds, linoleum and window frames.

B. Specifically, it is found that Defendants have for many years allowed this condition to exist on the property even though they have been notified by the Harris County Health Department as to the health risks and illegality of their actions. The general condition of the premises has been shown to be the same throughout the past several years in that the rubbish and refuse has remained on the property with more added over time and Defendants will continue to maintain this property in this illegal condition unless ordered by this Court to abate these violations.

C. The injury to the citizens of Harris County that would result from allowing these conditions to continue at 12205 Robert E. Lee, Houston, Harris County, Texas, will be irreparable. Said premises being more fully described as:

Lots Seventeen (17) and Eighteen (18) and the adjoining 1/2 of Lot Sixteen (16), in Block Fourteen (14) of HOUMONT PARK, an addition in Harris County, Texas according to the Map or plat thereof recorded in Volume 16, Page 32 of the Map Records of Harris County, Texas.

(hereinafter 12205 Robert E. Lee).

D. FURTHER, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT DEFENDANTS, THEIR AGENTS, SUCCESSORS AND ASSIGNS and those persons in active concert or participation with them, who receive actual notice of this temporary injunction by personal service or otherwise, are hereby affirmatively enjoined, as follows:

1. That Defendants, shall arrange for removal and disposal, or appropriate containment, of all rubbish and refuse as defined by the §343.011 of the Texas Health and Safety Code, located at 12205 Robert E. Lee. Said removal, disposal and containment shall be initiated within 10 days after the service upon Defendants of this temporary injunction:

2. The material to be removed includes, but is not limited to: used lumber, glass and bottles, scrap metal, paper products, cardboard boxes, rusted and inoperable vehicles (cars, trucks) and refrigerators, auto parts, plastic jugs and buckets, metal drums, rusted and broken furniture, inoperable water heaters, shopping carts and other miscellaneous household refuse such as window blinds, linoleum and window frames. Removal will be conducted by Defendants as follows:

a. Material at the site which is salvageable or recyclable may be sold to appropriate salvage dealers and recyclers. At the request of Defendants, the Harris County Health Department will advise the Defendants in contacting dealers and obtaining bids to arrange removal of glass, metal, paper and recyclable plastic.

b. If no market for specific items is identified by Defendants within the 30 days allowed for completion of this cleanup, those items shall be presumed to have no value and shall be removed to an appropriate disposal facility by Defendants.

c. If Defendants identify specific material to be kept on site past the 30 day time limit, and that material comes within the statute's definition of "rubbish" or "refuse", or it is material that, if left out in the open, would attract or harbor mosquitoes, rodents, vermin or other disease carrying pests, that material shall be stored as follows:

1) Such material shall be enclosed in weather, rodent and insect-proof buildings or containers, which shall be maintained in a condition which will not attract or harbor mosquitoes, rodents, vermin or other disease carrying pests. Material which is specifically identified as requiring weather, rodent and insect-proof containers are:

- a) animal feed;
- b) seeds;
- c) vessels capable of collecting rainwater if left out in the open, including but not limited to bottles, plastic buckets, metal cans and other vessels;
- d) paper and cardboard; and
- e) lumber, whether used or new, including wooden furniture or other items made primarily of wood.

2) Defendants shall implement insect and rodent control measures at the property. Said measures shall be appropriate means of pest control at least comparable to what would be applied by professional, certified pest control contractors. Upon request of Defendants, the Harris County Health Department will provide advice and recommendations as to effective insect and rodent control.

E. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a final trial on the merits of this case shall be set for \_\_\_\_\_. At trial it shall be determined whether a permanent injunction shall issue against Defendants, and to run with the land known as 12205 Robert E. Lee, in Harris County, Texas enjoining said Defendants, their agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, as follows:

F. That Defendants be ORDERED to maintain the property in a condition which is not a public nuisance as defined in §343.011(b) of the Health and Safety Code. Specifically, Defendants shall not:

- a. keep, store, or accumulate refuse on the premises unless the refuse is entirely contained in a closed receptacle;
- b. keep, store, accumulate rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans on the premises for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;
- c. maintain the premises in a manner that creates an unsanitary conditions likely to attract or harbor mosquitoes, rodents, vermin, or disease carrying pests;
- d. allowing weeds to grow on premises within 300 feet of another residence; and
- e. maintain all buildings in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare due to inadequate maintenance, unsanitary conditions, dilapidation, or because it constitutes a fire hazard.

G. IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT HARRIS COUNTY is exempt by law from the necessity of making bond in this cause and further, that requirement for bond, if any, is specifically waived by Defendants, and that the Clerk of this Court without the requirement of bond, shall issue forthwith, when so requested by Plaintiff, a writ of injunction in accordance with his Order.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

ANY RELIEF NOT SPECIFICALLY GRANTED HEREIN IS DENIED.

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JUDGE PRESIDING

**VERIFICATION**

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

BEFORE ME, the undersigned authority, personally appeared PHILIP MOORE, who being by me duly sworn, deposed as follows:

“My name is PHILIP MOORE, I am the Nuisance Abatement Supervisor for the Harris County Health Department. I have read the above and foregoing Motion for Contempt for violation of the temporary injunction and every statement contained therein is within my personal knowledge and true and correct.”

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

\_\_\_\_\_  
PHILIP MOORE

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary

My commission expires: \_\_\_\_\_



CAUSE NO. 93-062260

HARRIS COUNTY  
Plaintiff

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

v.

OF HARRIS COUNTY, TEXAS

SANTOS V. VALDEZ  
AND JOHN C. VALDEZ  
Defendants

127<sup>TH</sup> JUDICIAL DISTRICT

**THIRD JUDGMENT OF CONTEMPT**

I. HISTORY

On February 10, 1994, at the request of Plaintiff, Harris County, Texas, this court entered a temporary injunction to constrain Defendants Santos V. Valdez and John C. Valdez from further violation of Chapter 343 of the Health and Safety Code at the property located at 12205 Robert E. Lee, Harris County, Texas.

On May 23, 1994 an order to show cause was issued by this court directed to Defendants ordering them to appear before this court on June 27, 1994 at 8:00 a.m. and show cause why they should not be held in contempt of court for failing to obey this court's order of temporary injunction.

On June 27, 1994 that order to show cause came on for hearing. Upon reviewing the evidence submitted at that show cause hearing the Court found the Defendants, Santos V. Valdez and John C. Valdez, had failed and refused to comply with the temporary injunction and were in contempt of Court and ordered them confined to the jail of Harris County.

Said confinement was suspended until July 20, 1994 to give the Defendants the opportunity to purge themselves of their contempt. A hearing was held on July 25, 1994 to determine if Defendants had purged themselves of their contempt. All parties appeared before

the Court on that date. Pursuant to that hearing and upon reviewing the evidence and the testimony of the witnesses, this Court determined that the Defendants had not purged themselves of their contempt in that they had failed to remove the rubbish and refuse from the property; failed to enclose rubbish and refuse on the property in weather, rodent and insect-proof buildings or containers; and failed to implement insect and rodent control measures at the property.

## II. THE CONTEMPT ISSUES CURRENTLY BEFORE THE COURT

The Court then issued its Second Judgment of Contempt and Order to Abate the Public Nuisance (Order to Abate the Public Nuisance), which fully incorporated the original Temporary Injunction issued in this cause, commanding that Santos V. Valdez and John C. Valdez do the following by August 31, 1994:

1. cause rodent and insect control measures to be implemented at the property; and
2. cause the removal of the rubbish and refuse at the site until they have fully complied with the instructions of the County Health Department as provided for in the Order to Abate the Public Nuisance.

It was further ordered that upon the failure of Santos V. Valdez and John C. Valdez to comply with the Order to Abate the Public Nuisance, a show cause hearing would be held wherein Santos V. Valdez and John C. Valdez would be required to show why they should not be immediately confined to the Harris County Jail to serve their sentence for contempt of this Court.

## III. THE COURT'S FINDINGS PURSUANT TO THE SHOW CAUSE HEARING

On September 12, 1994, came on for hearing to show cause why Santos V. Valdez and John C. Valdez should not be confined in the county jail for their failure and refusal to comply with the Order to Abate the Public Nuisance. All parties appeared, having been properly served

with notice. Upon reviewing the testimony presented and evidence submitted at the September 12, 1994 show cause hearing, the Court finds the Defendants, Santos V. Valdez and John C. Valdez have failed and refused to comply with the Temporary Injunction issued in this cause, and that they have further failed and refused to comply with this Court's Second Judgment of Contempt and Order to Abate the Public Nuisance in that they have not caused rodent and insect control measures to be implemented at the property; nor have they fully complied with the instructions of the County Health Department as provided in the Order to Abate the Public Nuisance as they have failed to remove the rubbish and refuse from the site by August 31, 1994.

THEREFORE DEFENDANTS JOHN C. VALDEZ AND SANTOS V. VALDEZ are in contempt of this court and John C. Valdez and Santos V. Valdez shall be placed in the Jail of Harris County, Texas without bail, beginning on \_\_\_\_\_, 1994 until the contempt is purged by removal and disposal of all rubbish and refuse and implementation of insect and rodent control measures at the property known as 12205 Robert E. Lee (whichever time is shorter) in compliance with Chapter 343 of the Texas Health and Safety Code, fully incorporated herein by reference.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

---

JUDGE PRESIDING

CAUSE NO. 93-062260

HARRIS COUNTY	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SANTOS V. VALDEZ	§	
AND JOHN C. VALDEZ	§	
Defendants	§	127 <sup>TH</sup> JUDICIAL DISTRICT

**ORDER OF COMMITMENT FOR CONTEMPT OF COURT**

On September 12, 1994 came on to be heard the above cause in which Defendants Santos V. Valdez and John C. Valdez are accused by Harris County, Texas, Plaintiff herein, of contempt of court for violating this court's temporary injunction, dated and entered on February 10, 1994, and this Court's "Second Judgment of Contempt and Order to Abate the Public Nuisance" ("Order to Abate the Public Nuisance") entered on July 25, 1994.

DEFENDANT SANTOS V. VALDEZ was found to be in contempt of court, having failed to purge herself of her contempt by complying with this Court's Order to Abate the Public Nuisance and pursuant to the Judgment of Contempt issued by this Court in this cause on June 27, 1994. Therefore, as authorized by TEX. R. CIV. P. 692, SANTOS V. VALDEZ shall be placed in the Jail of Harris County, Texas, without bail, beginning on September 12, 1994, until the contempt is purged by removal and disposal of all rubbish and refuse and implementation of insect and rodent control measures at the property known as 12205 Robert E. Lee as set out in the Order to Abate the Public Nuisance.

IT IS THEREFORE ORDERED that attachment for the body of Defendant SANTOS V. VALDEZ issue to any sheriff or constable in Texas so she may be committed as ordered and the order of contempt enforced.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

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JUDGE PRESIDING

CAUSE NO. 93-062260

HARRIS COUNTY	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SANTOS V. VALDEZ	§	
AND JOHN C. VALDEZ	§	
Defendants	§	127 <sup>TH</sup> JUDICIAL DISTRICT

**FINAL JUDGMENT AND PERMANENT INJUNCTION**

On this the 14<sup>th</sup> day of November, 1994, came on to be heard the above-entitled and numbered cause. Harris County, Texas, Plaintiff, appeared b y and through the Harris County Attorney and announced ready for trial; Santos V. Valdez and John C. Valdez. Defendants herein, appeared \_\_\_\_\_ and announced ready for trial. No jury having been demanded, all questions of fact were submitted to the Court and the cause proceeded to trial.

I.

The Court, after receiving the evidence and hearing the arguments of counsel and Mr. and Mrs. Valdez, is of the opinion that Harris County proved facts necessary to show that Defendants Santos V. Valdez and John C. Valdez, the record owners and occupants of the property known as:

Lots Seventeen (17) and Eighteen (18) and the adjoining 1/2 of Lot Sixteen (16), in Block Fourteen (14) of HOUMONT PARK, an addition in Harris County, Texas according to the Map or plat thereof recorded in Volume 16, Page 32 of the Map Records of Harris County, Texas.

(hereinafter 12205 Robert E. Lee) have caused, permitted or allowed a public nuisance, as defined in Ch. 343 of the Health and Safety Code, on that premises and that they will continue to

cause, permit or allow the public nuisance at that property unless this Court orders them to cease. Therefore, pursuant to Section 343.013 of that chapter, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT HARRIS COUNTY'S PETITION FOR PERMANENT INJUNCTION IS GRANTED.

## II.

IT IS ORDERED, ADJUDGED AND DECREED THAT DEFENDANTS Santos V. Valdez and John C. Valdez, husband and wife, and their successors in interest to the land known as 12205 Robert E. Lee are affirmatively enjoined, as follows:

A. Defendants shall remove from the property known as 12205 Robert E. Lee the following material: lumber, bottles, jars, scrap metal, paper products including but not limited to piles of cardboard boxes, inoperable vehicles (cars, trucks), tires, bathtubs, inoperable kitchen appliances, auto parts, plastic jugs, plastic buckets, metal drums, broken furniture, inoperable water heaters, shopping carts and any other miscellaneous refuse<sup>1</sup> currently at the site, including but not limited to window blinds, linoleum and window frames. This material shall be removed to a permitted landfill site or a recycling center. The Defendants shall provide to the Harris County Health Department, upon request, receipts for disposal of the material. The aforementioned material is specifically found by this court to be rubbish and refuse prohibited under Chapter 343 of the Texas Health and Safety Code and it is required to be removed from the site within thirty (30) days from the date this Permanent Injunction is signed.

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<sup>1</sup> For the purpose of this order refuse means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses. Rubbish means nondecayable waste from a public or private establishment or residence. Garbage means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.

B. Further and in addition, Defendants, from this time forward, shall maintain the property in a condition which is not a public nuisance as defined and prohibited in §343.011(b) of the Health and Safety Code. Specifically, Defendants shall not:

1. keep, store, or accumulate refuse on the premises unless the refuse is entirely contained in a closed receptacle;
2. keep, store, accumulate rubbish, including but not limited to newspapers, abandoned vehicles, inoperable appliances, furniture, tires, glass and/or cans on the premises for more than 10 days unless the rubbish is completely enclosed in a rodent proof building and the rubbish is not visible from a public street;
3. maintain the premises in a manner that creates an unsanitary conditions likely to attract or harbor mosquitoes, rodents, vermin, or disease carrying pests; and
4. allow weeds to grow on the premises within 300 feet of another residence.

C. Defendants shall immediately implement and hereinafter maintain reasonable insect and rodent control measures at the premises known as 12205 Robert E. Lee.

III.

IT IS ORDERED, ADJUDGED AND DECREED THAT HARRIS COUNTY is exempt by law from the necessity of making bond in this cause and that the Clerk of this Court, without the requirement of bond, shall issue forthwith, when so requested by Plaintiff, a writ of injunction in accordance with this Order.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT, Santos V. Valdez and John C. Valdez shall pay the court costs associated with this cause.

ANY RELIEF NOT SPECIFICALLY GRANTED HEREIN IS DENIED.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.



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JUDGE PRESIDING

CAUSE NO. 93-062260

HARRIS COUNTY	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SANTOS V. VALDEZ	§	
AND JOHN C. VALDEZ	§	
Defendants	§	127 <sup>TH</sup> JUDICIAL DISTRICT

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above captioned cause came on for trial before the Court without a jury on \_\_\_\_\_, 1994. Plaintiff Harris County, Texas appeared by and through the Harris County Attorney, Defendants Santos V. Valdez and John C. Valdez appeared \_\_\_\_\_. After considering the pleadings, the evidence, and the argument from counsel and Defendants, the court makes its findings of fact and conclusions of law as follows:

**FINDINGS OF FACT**

1. Santos V. Valdez and John C. Valdez are the owners of the property known as 12205 Robert E. Lee, Houston, Harris County, Texas, said premises is in the unincorporated area of Harris County, Texas, and is more fully described as:

Lots Seventeen (17) and Eighteen (18) and the adjoining 1/2 of Lot Sixteen (16), in Block Fourteen (14) of HOUMONT PARK, an addition in Harris County, Texas according to the Map or plat thereof recorded in Volume 16, Page 32 of the Map Records of Harris County, Texas.

2. Santos V. Valdez and John C. Valdez have caused, permitted or allowed the following at the above described property:

- a. the keeping, storing, or accumulating of refuse on premises in a neighborhood which is not contained in a closed receptacle;
- b. the keeping, storing or accumulating of rubbish in a neighborhood for 10 days or more without enclosing the rubbish completely in a building, or keeping the rubbish from being visible from the public street; and
- c. maintenance of the premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease carrying pests.

#### CONCLUSIONS OF LAW

1. The property known as 12205 Robert E. Lee, Harris County, Texas is a prohibited public nuisance under Section 343.011 of the Health and Safety Code.
2. Said public nuisance is a violation of Chapter 343 of the Health and Safety Code which may be prevented and restrained by injunction.

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JUDGE PRESIDING



No. \_\_\_\_\_

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>v.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>SANTOS V. VALDEZ and</b>	§	
<b>JOHN C. VALDEZ,</b>	§	
<b>Defendants</b>	§	<b>_____ JUDICIAL DISTRICT</b>

**PLAINTIFF’S ORIGINAL PETITION AND  
APPLICATION FOR A TEMPORARY INJUNCTION**

Harris County, Texas, Plaintiff, complains of Santos V. Valdez and John C. Valdez, Defendants.

This is an enforcement action under Chapter 343 of the Texas Health and Safety Code, which prohibits public health nuisances. Defendants are the record owners of the property located at 12205 Robert E. Lee in Harris County, Texas, and are causing, permitting, or allowing a public nuisance condition to exist on that property in violation of the law.

Harris County, by and through Harris County Attorney Mike Stafford, now seeks injunctive relief, attorney’s fees, and court costs for these violations of the Health and Safety Code by Defendants. For cause of action, Plaintiff would respectfully show the Court the following:

**I. DISCOVERY LEVEL AND 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.

**II. PARTIES TO THIS SUIT**

**PLAINTIFF**

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

## DEFENDANTS

2.2 Defendants Santos V. Valdez and John C. Valdez are husband and wife, and reside at 12205 Robert E. Lee in Harris County, Texas. Each may be served at that location pursuant to the Texas Rules of Civil Procedure.

## **III. JURISDICTION AND VENUE**

3.1 This is a suit for injunctive relief, attorney's fees and court costs pursuant to Chapter 343 of the Texas Health and Safety 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. STATUTORY PROVISIONS AND VIOLATIONS**

### **Applicable Law- Texas Health & Safety Code Chapter 343**

4.1 Chapter 343 of the Texas Health and Safety Code prohibits public health nuisances in the unincorporated area of a county. Specifically, Section 343.011(b) states that a person may not cause, permit, or allow a public nuisance action under that section.

4.2 Section 343.011(c) states that a public nuisance includes:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood or within 300 feet of a public street for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street; and

(3) maintaining the premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests.

4.3 Section 343.002(9) defines "refuse" as "garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses." Section 343.002(10) defines "rubbish" as "nondecayable waste from a public or private establishment or residence."

### **Specific Violations at Defendants' property**

4.4 Defendants have caused, permitted or allowed the following violations:

1. Defendants are keeping, storing, and accumulating refuse on their premises in a neighborhood at 12205 Robert E. Lee that is not contained in a closed receptacle;

2. Defendants are keeping, storing, or accumulating rubbish on their premises in a neighborhood at 12205 Robert E. Lee that is not enclosed in a building and is visible from a public street; and

3. Defendants are maintaining their premises at 12205 Robert E. Lee in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests.

4.5 Specifically, the following material has been observed out in the open at the premises by neighbors and investigators of the Harris County Health Department: piles of used lumber, glass and bottles, scrap metal, paper products including piles of cardboard boxes, rusted and inoperable vehicles including cars, trucks, and an old crane, tires, cardboard, a bathtub, a refrigerator, auto parts, plastic jugs, metal drums, rusted and broken furniture, inoperable water heaters, shopping carts, window blinds, linoleum, and other miscellaneous household refuse.

The general condition of the premises has essentially been the same for the past two years since the first investigation on August 16, 2001, in that the rubbish and refuse have remained on the property with more added over time. The conditions complained of are ongoing and continuous.

### **V. INJUNCTIVE RELIEF**

5.1 Pursuant to Section 343.013 of the Health and Safety Code, this court may grant Harris County, without bond or other undertaking, any prohibitory or mandatory injunction the facts of this case warrant. Harris County seeks a temporary and permanent injunction prohibiting Defendants, their employees, agents, successors, and or assigns, from future violations of the Texas Health and Safety Code and directing Defendants to take specific actions necessary to avoid such violations.

### **VI. PRAYER**

WHEREFORE, Plaintiff prays:

1. that citation issue in due form of law against Defendants;
2. that the Court enter an order setting a hearing on this application for a temporary injunction;
3. that upon hearing the Court enter a temporary injunction, to run with the land and against the Defendants, their agents, successors and assigns, requiring that the rubbish and refuse on the property be removed and properly disposed and that the premises be maintained in a manner which complies with the Texas Health and Safety Code;
4. that the Court set a date certain for trial for a permanent injunction and that a permanent injunction be issued to compel Defendants to comply with Chapter 343 of the Texas Health and Safety Code;
5. that upon final trial in this cause, the Court grant Harris County its reasonable attorney's fees and that all costs be assessed against Defendants; and
6. the court grant such other and further relief to which plaintiff may be justly entitled.

MIKE STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Cathy J. Sisk  
Senior Assistant County Attorney  
SBN 18442000  
1310 Prairie, Ste. 940  
Houston, Texas 77002  
(713) 755-7872  
FAX (713) 755-2680

ATTORNEY FOR PLAINTIFF  
HARRIS COUNTY, TEXAS



**AFFIDAVIT**

STATE OF TEXAS           §

§

COUNTY OF HARRIS       §

Before me, the undersigned authority, on this day personally appeared Philip Moore, know to me, who being first duly sworn, stated on his oath as follows:

My names is Philip Moore, I am employed as the Neighborhood Nuisance Administrator for the Harris County Health Department. I am personally familiar with the property known as 12205 Robert E. Lee in Harris County, Texas. I have observed the condition of the property on numerous occasions over the past several years and know the history of the violations as set out in "Plaintiff's Original Petition and Application for a Temporary Injunction." I have read the petition and the facts set out therein are true and correct.

\_\_\_\_\_  
Philip Moore

Signed and sworn to before me, a Notary Public, on this the \_\_\_\_ day of August, 2004, to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public

CAUSE NO. 93-062260

HARRIS COUNTY	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SANTOS V. VALDEZ	§	
AND JOHN C. VALDEZ	§	
Defendants	§	127 <sup>TH</sup> JUDICIAL DISTRICT

**ORDER TO SHOW CAUSE**

The Motion by Harris County, by and through the Harris County Attorney's Office, seeking to have SANTOS V. VALDEZ and JOHN C. VALDEZ ("Defendants") held and punished for contempt of court in this matter, has been considered and found legally sufficient:

IT IS THEREFORE, ORDERED that Defendants appear before this court at \_\_\_\_\_ o'clock on \_\_\_\_\_, 1994. The purpose of this hearing is to determine whether Defendants should be held in contempt for disobedience of this Court's order for temporary injunction entered and signed on February 10, 1994, in each of the following respects:

A. Defendants have failed and refused to remove from the property known as 12205 Robert E. Lee, Harris County, Texas, the rubbish and refuse required to be removed from the property under the terms of the temporary injunction.

B. Defendants have failed and refused to enclose in weather, rodent and insect-proof buildings or containers the rubbish and refuse kept at 12205 Robert E. Lee, Harris County, Texas, as required in the temporary injunction.

C. Defendants have failed and refused to implement appropriate insect and rodent control measures at 12205 Robert E. Lee, Harris County, Texas, as required by the temporary injunction.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

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JUDGE PRESIDING

February 4, 1993

Honorable County Judge and Commissioners Court  
Harris County Administration Building  
1001 Preston, 9<sup>th</sup> Floor  
Houston, TX 77002

Attn: Mr. Kevin Mauzy  
Deputy County Clerk

Re: Order Authorizing County Attorney to File Suit to Abate a Nuisance and Authorizing Expenses of \$2,500.00

Gentlemen:

For your consideration, enclosed please find a proposed order relating to the above-referenced matter and a request for the approval of \$2,500.00 for litigation expenses.

For some time now, the Harris County Health Department has worked to remedy a nuisance condition existing on certain property owned by John C. Valdez and Santos V. Valdez located at 12205 Robert E. Lee in the unincorporated area of Harris County. Several criminal complaints have been filed, and fines assessed, to no avail.

The Health Department has requested that the County Attorney file a civil suit in order to obtain an injunction requiring compliance with the Nuisance Abatement Act. Hopefully, the property owners will comply with a court order, since failure to do so would subject them to confinement in jail pending their compliance.

Thank you for your consideration of this matter. Should you have any questions, please let me know.

Sincerely,

MIKE DRISCOLL  
County Attorney

By CATHY J. SISK  
Assistant County Attorney

Honorable County Judge and Commissioners Court  
Re: Suit to Abate Nuisance, Valdez Property  
February 4, 1993  
Page Two

APPROVED:

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DAVID HURLEY  
Chief, Trial Bureau

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MARSHA FLOYD  
First Assistant County Attorney

ORDER AUTHORIZING COUNTY ATTORNEY  
TO FILE SUIT TO ABATE A NUISANCE  
AND AUTHORIZING EXPENSES

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 1993, the Commissioners Court of Harris County being duly convened at a regular meeting of the court, upon motion to Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, duly put and carried, adopted the following:

WHEREAS, the Harris County Health Department has determined that a nuisance condition exists on certain property owned by John C. and Santos V. Valdez, located at 12205 Robert E. Lee in Harris County, Texas, in violation of the Nuisance Abatement Act, Chapter 343 of the Texas Health and Safety Code; and

WHEREAS, the violations of the Nuisance Abatement Act include, but are not necessarily limited to: (1) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin or disease-carrying pests, and (2) keeping, storing, or accumulating refuse and rubbish on premises in a neighborhood for more than 10 days in an unenclosed area visible from a public street; and

WHEREAS, despite the issuance of numerous Notices to Abate and the assessment of fines, John C. and Santos V. Valdez continue to cause, permit or allow a nuisance condition to be maintained on their property;

THEREFORE, IT IS ORDERED AND RESOLVED that the Harris County Attorney be and is hereby authorized to file suit against John C. and Santos V. Valdez, as well as any other party who has caused, permitted, or allowed a nuisance condition on, or has an interest in, the property upon which the offending condition exists, for injunctive and other relief as is

authorized by the Texas Health and Safety Code and other environmental, public health and welfare protection laws.

IT IS FURTHER ORDERED AND RESOLVED that the County Attorney is authorized to join in such suit or suits, any and all parties that he deems proper, and to do any and all things reasonable and necessary to require said parties to comply with the law and to take such other steps in the disposition of the suit in accordance with the law as he may deem appropriate.

IT IS FURTHER ORDERED AND RESOLVED that the County Attorney be and is hereby authorized to expend the amount of \$2,500.00 as initial expenses in the case, which amount includes, but is not limited to, funds for court reporter fees, expert expenses, discovery costs, and any other reasonable and necessary expense.

All fund transfers necessary to accomplish the above are hereby ordered to be made.

All such costs and fees should be charged to the general fund.

CAUSE NO. 93-062260

HARRIS COUNTY	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SANTOS V. VALDEZ	§	
AND JOHN C. VALDEZ	§	
Defendants	§	127 <sup>TH</sup> JUDICIAL DISTRICT

**TEMPORARY INJUNCTION**

On this the \_\_\_\_\_ day of February, 1994, came on to be heard Plaintiff's "Petition Seeking Temporary Injunction" in the above styled and numbered cause, wherein Harris County, Texas, is the Plaintiff, and Santos V. Valdez and John C. Valdez, husband and wife, are Defendants.

This Court, finds upon consideration of the County's petition, including the affidavits, supporting materials including any response given by Defendants, that there is sufficient evidence to support the issuance of this Temporary Injunction to constrain Defendants from existing violations and the threat of further violation of Chapter 343 of the Health and Safety Code, and incorporated fully herein:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

A. HARRIS COUNTY'S PETITION IS GRANTED. The County's verified application, supported by affidavits and evidence, presents specific facts from which it is clear that, absent temporary relief as sought by the County, the Defendants will continue to violate the public nuisance provisions of Chapter 343 of the Health and Safety Code due to the continuous and ongoing presence of rubbish, refuse and conditions which attract or harbor mosquitoes, rodents, vermin or other disease carrying pests, including: piles of used lumber, glass and bottles, scrap



metal, paper products including piles of cardboard boxes, rusted and inoperable vehicles (cars, trucks and heavy equipment), tires, cardboard, a bathtub, a refrigerator, auto parts, plastic jugs and buckets, metal drums, rusted and broken furniture, inoperable water heaters, shopping carts and other miscellaneous household refuse such as window blinds, linoleum and window frames.

B. Specifically, it is found that Defendants have for many years allowed this condition to exist on the property even though they have been notified by the Harris County Health Department as to the health risks and illegality of their actions. The general condition of the premises has been shown to be the same throughout the past several years in that the rubbish and refuse has remained on the property with more added over time and Defendants will continue to maintain this property in this illegal condition unless ordered by this Court to abate these violations.

C. The injury to the citizens of Harris County that would result from allowing these conditions to continue at 12205 Robert E. Lee, Houston, Harris County, Texas, will be irreparable. Said premises being more fully described as:

Lots Seventeen (17) and Eighteen (18) and the adjoining 1/2 of Lot Sixteen (16), in Block Fourteen (14) of HOUMONT PARK, an addition in Harris County, Texas according to the Map or plat thereof recorded in Volume 16, Page 32 of the Map Records of Harris County, Texas.

(hereinafter 12205 Robert E. Lee).

D. FURTHER, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT DEFENDANTS, THEIR AGENTS, SUCCESSORS AND ASSIGNS and those persons in active concert or participation with them, who receive actual notice of this temporary injunction by personal service or otherwise, are hereby affirmatively enjoined, as follows:

1. That Defendants, shall arrange for removal and disposal, or appropriate containment, of all rubbish and refuse as defined by the §343.011 of the Texas Health and Safety Code, located at 12205 Robert E. Lee. Said removal, disposal and containment shall be initiated within 10 days after the service upon Defendants of this temporary injunction:

2. The material to be removed includes, but is not limited to: used lumber, glass and bottles, scrap metal, paper products, cardboard boxes, rusted and inoperable vehicles (cars, trucks) and refrigerators, auto parts, plastic jugs and buckets, metal drums, rusted and broken furniture, inoperable water heaters, shopping carts and other miscellaneous household refuse such as window blinds, linoleum and window frames. Removal will be conducted by Defendants as follows:

a. Material at the site which is salvageable or recyclable may be sold to appropriate salvage dealers and recyclers. At the request of Defendants, the Harris County Health Department will advise the Defendants in contacting dealers and obtaining bids to arrange removal of glass, metal, paper and recyclable plastic.

b. If no market for specific items is identified by Defendants within the 30 days allowed for completion of this cleanup, those items shall be presumed to have no value and shall be removed to an appropriate disposal facility by Defendants.

c. If Defendants identify specific material to be kept on site past the 30 day time limit, and that material comes within the statute's definition of "rubbish" or "refuse", or it is material that, if left out in the open, would attract or harbor mosquitoes, rodents, vermin or other disease carrying pests, that material shall be stored as follows:

1) Such material shall be enclosed in weather, rodent and insect-proof buildings or containers, which shall be maintained in a condition which will not attract or harbor mosquitoes, rodents, vermin or other disease carrying pests. Material which is specifically identified as requiring weather, rodent and insect-proof containers are:

- a) animal feed;
- b) seeds;
- c) vessels capable of collecting rainwater if left out in the open, including but not limited to bottles, plastic buckets, metal cans and other vessels;
- d) paper and cardboard; and
- e) lumber, whether used or new, including wooden furniture or other items made primarily of wood.

2) Defendants shall implement insect and rodent control measures at the property. Said measures shall be appropriate means of pest control at least comparable to what would be applied by professional, certified pest control contractors. Upon request of Defendants, the Harris County Health Department will provide advice and recommendations as to effective insect and rodent control.

E. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a final trial on the merits of this case shall be set for \_\_\_\_\_. At trial it shall be determined whether a permanent injunction shall issue against Defendants, and to run with the land known as 12205 Robert E. Lee, in Harris County, Texas enjoining said Defendants, their agents, servants, employees, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, as follows:

F. That Defendants be ORDERED to maintain the property in a condition which is not a public nuisance as defined in §343.011(b) of the Health and Safety Code. Specifically, Defendants shall not:

- a. keep, store, or accumulate refuse on the premises unless the refuse is entirely contained in a closed receptacle;
- b. keep, store, accumulate rubbish, including newspapers, abandoned vehicles, refrigerators, stoves, furniture, tires, and cans on the premises for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;
- c. maintain the premises in a manner that creates an unsanitary conditions likely to attract or harbor mosquitoes, rodents, vermin, or disease carrying pests;
- d. allowing weeds to grow on premises within 300 feet of another residence; and
- e. maintain all buildings in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare due to inadequate maintenance, unsanitary conditions, dilapidation, or because it constitutes a fire hazard.

G. IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT HARRIS COUNTY is exempt by law from the necessity of making bond in this cause and further, that requirement for bond, if any, is specifically waived by Defendants, and that the Clerk of this Court without the requirement of bond, shall issue forthwith, when so requested by Plaintiff, a writ of injunction in accordance with his Order.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

ANY RELIEF NOT SPECIFICALLY GRANTED HEREIN IS DENIED.

---

JUDGE PRESIDING

**VERIFICATION**

STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS       §

BEFORE ME, the undersigned authority, personally appeared PHILIP MOORE, who being by me duly sworn, deposed as follows:

“My name is PHILIP MOORE, I am the Nuisance Abatement Supervisor for the Harris County Health Department. I have read the above and foregoing Motion for Contempt for violation of the temporary injunction and every statement contained therein is within my personal knowledge and true and correct.”

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

\_\_\_\_\_  
PHILIP MOORE

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary

My commission expires: \_\_\_\_\_

CAUSE NO. 93-062260

HARRIS COUNTY  
Plaintiff

§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT  
  
OF HARRIS COUNTY, TEXAS  
  
127<sup>TH</sup> JUDICIAL DISTRICT

v.

SANTOS V. VALDEZ  
AND JOHN C. VALDEZ  
Defendants

**THIRD JUDGMENT OF CONTEMPT**

I. HISTORY

On February 10, 1994, at the request of Plaintiff, Harris County, Texas, this court entered a temporary injunction to constrain Defendants Santos V. Valdez and John C. Valdez from further violation of Chapter 343 of the Health and Safety Code at the property located at 12205 Robert E. Lee, Harris County, Texas.

On May 23, 1994 an order to show cause was issued by this court directed to Defendants ordering them to appear before this court on June 27, 1994 at 8:00 a.m. and show cause why they should not be held in contempt of court for failing to obey this court's order of temporary injunction.

On June 27, 1994 that order to show cause came on for hearing. Upon reviewing the evidence submitted at that show cause hearing the Court found the Defendants, Santos V. Valdez and John C. Valdez, had failed and refused to comply with the temporary injunction and were in contempt of Court and ordered them confined to the jail of Harris County.

Said confinement was suspended until July 20, 1994 to give the Defendants the opportunity to purge themselves of their contempt. A hearing was held on July 25, 1994 to determine if Defendants had purged themselves of their contempt. All parties appeared before

the Court on that date. Pursuant to that hearing and upon reviewing the evidence and the testimony of the witnesses, this Court determined that the Defendants had not purged themselves of their contempt in that they had failed to remove the rubbish and refuse from the property; failed to enclose rubbish and refuse on the property in weather, rodent and insect-proof buildings or containers; and failed to implement insect and rodent control measures at the property.

## II. THE CONTEMPT ISSUES CURRENTLY BEFORE THE COURT

The Court then issued its Second Judgment of Contempt and Order to Abate the Public Nuisance (Order to Abate the Public Nuisance), which fully incorporated the original Temporary Injunction issued in this cause, commanding that Santos V. Valdez and John C. Valdez do the following by August 31, 1994:

1. cause rodent and insect control measures to be implemented at the property; and
2. cause the removal of the rubbish and refuse at the site until they have fully complied with the instructions of the County Health Department as provided for in the Order to Abate the Public Nuisance.

It was further ordered that upon the failure of Santos V. Valdez and John C. Valdez to comply with the Order to Abate the Public Nuisance, a show cause hearing would be held wherein Santos V. Valdez and John C. Valdez would be required to show why they should not be immediately confined to the Harris County Jail to serve their sentence for contempt of this Court.

## III. THE COURT'S FINDINGS PURSUANT TO THE SHOW CAUSE HEARING

On September 12, 1994, came on for hearing to show cause why Santos V. Valdez and John C. Valdez should not be confined in the county jail for their failure and refusal to comply with the Order to Abate the Public Nuisance. All parties appeared, having been properly served

with notice. Upon reviewing the testimony presented and evidence submitted at the September 12, 1994 show cause hearing, the Court finds the Defendants, Santos V. Valdez and John C. Valdez have failed and refused to comply with the Temporary Injunction issued in this cause, and that they have further failed and refused to comply with this Court's Second Judgment of Contempt and Order to Abate the Public Nuisance in that they have not caused rodent and insect control measures to be implemented at the property; nor have they fully complied with the instructions of the County Health Department as provided in the Order to Abate the Public Nuisance as they have failed to remove the rubbish and refuse from the site by August 31, 1994.

THEREFORE DEFENDANTS JOHN C. VALDEZ AND SANTOS V. VALDEZ are in contempt of this court and John C. Valdez and Santos V. Valdez shall be placed in the Jail of Harris County, Texas without bail, beginning on \_\_\_\_\_, 1994 until the contempt is purged by removal and disposal of all rubbish and refuse and implementation of insect and rodent control measures at the property known as 12205 Robert E. Lee (whichever time is shorter) in compliance with Chapter 343 of the Texas Health and Safety Code, fully incorporated herein by reference.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

---

JUDGE PRESIDING



CAUSE NO. 93-062260

HARRIS COUNTY	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SANTOS V. VALDEZ	§	
AND JOHN C. VALDEZ	§	
Defendants	§	127 <sup>TH</sup> JUDICIAL DISTRICT

**ORDER OF COMMITMENT FOR CONTEMPT OF COURT**

On September 12, 1994 came on to be heard the above cause in which Defendants Santos V. Valdez and John C. Valdez are accused by Harris County, Texas, Plaintiff herein, of contempt of court for violating this court's temporary injunction, dated and entered on February 10, 1994, and this Court's "Second Judgment of Contempt and Order to Abate the Public Nuisance" ("Order to Abate the Public Nuisance") entered on July 25, 1994.

DEFENDANT SANTOS V. VALDEZ was found to be in contempt of court, having failed to purge herself of her contempt by complying with this Court's Order to Abate the Public Nuisance and pursuant to the Judgment of Contempt issued by this Court in this cause on June 27, 1994. Therefore, as authorized by TEX. R. CIV. P. 692, SANTOS V. VALDEZ shall be placed in the Jail of Harris County, Texas, without bail, beginning on September 12, 1994, until the contempt is purged by removal and disposal of all rubbish and refuse and implementation of insect and rodent control measures at the property known as 12205 Robert E. Lee as set out in the Order to Abate the Public Nuisance.

IT IS THEREFORE ORDERED that attachment for the body of Defendant SANTOS V. VALDEZ issue to any sheriff or constable in Texas so she may be committed as ordered and the order of contempt enforced.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

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JUDGE PRESIDING

CAUSE NO. 93-062260

HARRIS COUNTY	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SANTOS V. VALDEZ	§	
AND JOHN C. VALDEZ	§	
Defendants	§	127 <sup>TH</sup> JUDICIAL DISTRICT

**FINAL JUDGMENT AND PERMANENT INJUNCTION**

On this the 14<sup>th</sup> day of November, 1994, came on to be heard the above-entitled and numbered cause. Harris County, Texas, Plaintiff, appeared b y and through the Harris County Attorney and announced ready for trial; Santos V. Valdez and John C. Valdez. Defendants herein, appeared \_\_\_\_\_ and announced ready for trial. No jury having been demanded, all questions of fact were submitted to the Court and the cause proceeded to trial.

I.

The Court, after receiving the evidence and hearing the arguments of counsel and Mr. and Mrs. Valdez, is of the opinion that Harris County proved facts necessary to show that Defendants Santos V. Valdez and John C. Valdez, the record owners and occupants of the property known as:

Lots Seventeen (17) and Eighteen (18) and the adjoining 1/2 of Lot Sixteen (16), in Block Fourteen (14) of HOUMONT PARK, an addition in Harris County, Texas according to the Map or plat thereof recorded in Volume 16, Page 32 of the Map Records of Harris County, Texas.

(hereinafter 12205 Robert E. Lee) have caused, permitted or allowed a public nuisance, as defined in Ch. 343 of the Health and Safety Code, on that premises and that they will continue to

cause, permit or allow the public nuisance at that property unless this Court orders them to cease. Therefore, pursuant to Section 343.013 of that chapter, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT HARRIS COUNTY'S PETITION FOR PERMANENT INJUNCTION IS GRANTED.

## II.

IT IS ORDERED, ADJUDGED AND DECREED THAT DEFENDANTS Santos V. Valdez and John C. Valdez, husband and wife, and their successors in interest to the land known as 12205 Robert E. Lee are affirmatively enjoined, as follows:

A. Defendants shall remove from the property known as 12205 Robert E. Lee the following material: lumber, bottles, jars, scrap metal, paper products including but not limited to piles of cardboard boxes, inoperable vehicles (cars, trucks), tires, bathtubs, inoperable kitchen appliances, auto parts, plastic jugs, plastic buckets, metal drums, broken furniture, inoperable water heaters, shopping carts and any other miscellaneous refuse<sup>1</sup> currently at the site, including but not limited to window blinds, linoleum and window frames. This material shall be removed to a permitted landfill site or a recycling center. The Defendants shall provide to the Harris County Health Department, upon request, receipts for disposal of the material. The aforementioned material is specifically found by this court to be rubbish and refuse prohibited under Chapter 343 of the Texas Health and Safety Code and it is required to be removed from the site within thirty (30) days from the date this Permanent Injunction is signed.

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<sup>1</sup> For the purpose of this order refuse means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses. Rubbish means nondecayable waste from a public or private establishment or residence. Garbage means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.

B. Further and in addition, Defendants, from this time forward, shall maintain the property in a condition which is not a public nuisance as defined and prohibited in §343.011(b) of the Health and Safety Code. Specifically, Defendants shall not:

1. keep, store, or accumulate refuse on the premises unless the refuse is entirely contained in a closed receptacle;
2. keep, store, accumulate rubbish, including but not limited to newspapers, abandoned vehicles, inoperable appliances, furniture, tires, glass and/or cans on the premises for more than 10 days unless the rubbish is completely enclosed in a rodent proof building and the rubbish is not visible from a public street;
3. maintain the premises in a manner that creates an unsanitary conditions likely to attract or harbor mosquitoes, rodents, vermin, or disease carrying pests; and
4. allow weeds to grow on the premises within 300 feet of another residence.

C. Defendants shall immediately implement and hereinafter maintain reasonable insect and rodent control measures at the premises known as 12205 Robert E. Lee.

III.

IT IS ORDERED, ADJUDGED AND DECREED THAT HARRIS COUNTY is exempt by law from the necessity of making bond in this cause and that the Clerk of this Court, without the requirement of bond, shall issue forthwith, when so requested by Plaintiff, a writ of injunction in accordance with this Order.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT, Santos V. Valdez and John C. Valdez shall pay the court costs associated with this cause.

ANY RELIEF NOT SPECIFICALLY GRANTED HEREIN IS DENIED.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

---

JUDGE PRESIDING

CAUSE NO. 93-062260

HARRIS COUNTY	§	IN THE DISTRICT COURT
Plaintiff	§	
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SANTOS V. VALDEZ	§	
AND JOHN C. VALDEZ	§	
Defendants	§	127 <sup>TH</sup> JUDICIAL DISTRICT

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The above captioned cause came on for trial before the Court without a jury on \_\_\_\_\_, 1994. Plaintiff Harris County, Texas appeared by and through the Harris County Attorney, Defendants Santos V. Valdez and John C. Valdez appeared \_\_\_\_\_. After considering the pleadings, the evidence, and the argument from counsel and Defendants, the court makes its findings of fact and conclusions of law as follows:

**FINDINGS OF FACT**

1. Santos V. Valdez and John C. Valdez are the owners of the property known as 12205 Robert E. Lee, Houston, Harris County, Texas, said premises is in the unincorporated area of Harris County, Texas, and is more fully described as:

Lots Seventeen (17) and Eighteen (18) and the adjoining 1/2 of Lot Sixteen (16), in Block Fourteen (14) of HOUMONT PARK, an addition in Harris County, Texas according to the Map or plat thereof recorded in Volume 16, Page 32 of the Map Records of Harris County, Texas.

2. Santos V. Valdez and John C. Valdez have caused, permitted or allowed the following at the above described property:

- a. the keeping, storing, or accumulating of refuse on premises in a neighborhood which is not contained in a closed receptacle;
- b. the keeping, storing or accumulating of rubbish in a neighborhood for 10 days or more without enclosing the rubbish completely in a building, or keeping the rubbish from being visible from the public street; and
- c. maintenance of the premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease carrying pests.

#### CONCLUSIONS OF LAW

1. The property known as 12205 Robert E. Lee, Harris County, Texas is a prohibited public nuisance under Section 343.011 of the Health and Safety Code.
2. Said public nuisance is a violation of Chapter 343 of the Health and Safety Code which may be prevented and restrained by injunction.

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JUDGE PRESIDING





No. 2000-60470

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
<b>and the</b>	§	
	§	
<b>STATE OF TEXAS</b>	§	
<b>acting by and through the Texas Natural</b>	§	
<b>Resource Conservation Commission and the</b>	§	<b>HARRIS COUNTY, TEXAS</b>
<b>Texas Department of Health</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>LAS BRISAS INVESTMENT CORP.,</b>	§	
<b>Defendant</b>	§	<b>125th JUDICIAL DISTRICT</b>

**AGREED FINAL JUDGMENT**

Plaintiffs, Harris County, Texas, the Texas Natural Resource Conservation Commission, and the Texas Department of Health, and Defendant, Las Brisas Investment Corporation, submit this Agreed Final Judgment.

**1. Background**

Harris County brought this lawsuit against Las Brisas Investment Corporation pursuant to the Texas Water Code and the Texas Health & Safety Code for alleged violations relating to sewage discharged at 12215 Northwood Forest Drive. The Texas Natural Resource Conservation Commission and the Texas Department of Health (hereinafter collectively referred to as “the State of Texas”) were joined in this action as necessary and indispensable parties plaintiff.

**2. Stipulations**

All parties stipulate to the following:

- a. That they have read and understand the terms of this judgment.
- b. That Plaintiffs, Harris County and the State of Texas, are duly authorized to bring this cause of action pursuant to state law.

- c. That Defendant Las Brisas Investment Corporation owns an apartment complex located at 12215 Northwood Forest Drive.
- d. That this Agreed Final Judgment complies with all of the statutory, jurisdictional, and procedural requisites necessary for entry and enforcement.
- e. That all parties agree to the terms of this Agreed Final Judgment, request the Court to approve it, and waive the right to appeal its this judgment.
- f. That Harris County, Texas and the State of Texas do not waive their right to demand additional enforcement of the Texas Water Code or the Texas Health & Safety Code or take future action against the Defendant to enforce the laws and regulations of Harris County, the State of Texas, or the United States, except with regard to violations alleged in Plaintiffs' Second Amended Petition.
- g. That the occurrence of any violation is disputed by the defendant, and the entry of this Agreed Final Judgment shall not constitute an admission by Las Brisas Investment Corporation of any violation alleged in the Second Amended Petition, nor of any statute, rule or ordinance.

### **3. Civil Penalties**

The Court hereby ORDERS that Plaintiffs Harris County, Texas and the State of Texas shall have and recover from Las Brisas Investment Corporation the sum of SIXTY THOUSAND DOLLARS AND NO CENTS (\$60,000.00) in civil penalties. These penalties shall be divided equally between Harris County and the State of Texas. Payment is due on or before the date the Court signs this judgment. Each payment shall be made by cashier's check as follows:

- (a) Payment to Harris County shall be made by check in the amount of THIRTY THOUSAND DOLLARS AND NO CENTS (\$30,000.00) payable to "Harris County, Texas for deposit into

the General Fund.” This check shall be delivered to Clarissa Kay Bauer at the address noted beneath her signature line on or before the date the Court signs this judgment.

(b) Payment to the State of Texas shall be made by cashier’s check in the amount of THIRTY THOUSAND DOLLARS AND NO CENTS (\$30,000.00) payable to “The State of Texas.” This check shall be delivered to the Chief of the Natural Resources Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

#### **4. Injunctive Relief**

It is further ORDERED that Las Brisas Investment Corporation is hereby required to perform the following:

- a. Stop any discharges of sewage from 12215 Northwood Forest Drive; and
- b. Vacuum and haul all sewage, sewage contaminated water, and sewage related solid waste discharged from the sewage collection system at 12215 Northwood Forest Drive to a site that is legally authorized by the State of Texas to accept and dispose of sewage

#### **5. Attorney’s Fees**

It is further ORDERED that Las Brisas Investment Corporation shall pay to the State of Texas attorney’s fees in the amount of SIX THOUSAND DOLLARS AND NO CENTS (\$6,000.00). Payment is due on or before the date the Court signs this judgment.

It is further ORDERED that Las Brisas Investment Corporation shall pay to Harris County, Texas attorney’s fees in the amount of SEVEN THOUSAND DOLLARS AND NO CENTS (\$7,000.00). This check shall be delivered to Clarissa Kay Bauer at the address noted beneath her signature line on or before the date the Court signs this judgment.

#### **6. Court Costs**

Las Brisas Investment Corporation shall pay the District Clerk's filing fee in this case. A cashier's check for the District Clerk's filing fee in the amount of TWO HUNDRED EIGHT DOLLARS AND NO CENTS (\$208.00) shall be made payable to Harris County District Clerk, Charles Bacarisse. This check shall be delivered to Clarissa Kay Bauer at the address noted beneath her signature line on or before the date the Court signs this judgment.

This Agreed Final Judgment shall be effective immediately upon signing by the Court and may not be appealed.

### **7. Other Relief**

IT IS FURTHER ORDERED that Harris County and the State of Texas are allowed such writs of execution and other processes as may be necessary in the collection or enforcement of this judgment.

The Court denies all relief not granted in this judgment.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
JUDGE PRESIDING

AGREED AND ENTRY  
REQUESTED:

MICHAEL A. STAFFORD  
County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
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ANDY TAYLOR  
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By: \_\_\_\_\_  
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**ATTORNEYS FOR PLAINTIFFS  
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AND TEXAS DEPARTMENT OF HEALTH**

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By: \_\_\_\_\_  
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**ATTORNEYS FOR LAS BRISAS INVESTMENT CORPORATION**

**THE STATE OF TEXAS §**  
**COUNTY OF HARRIS §**

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 the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, with the following members present, to-wit:

Robert Eckels	County Judge
El Franco Lee	Commissioner, Precinct No. 1
Sylvia Garcia	Commissioner, Precinct No. 2
Steve Radack	Commissioner, Precinct No. 3
Jerry Eversole	Commissioner, Precinct No. 4

And the following members absent, to-wit: \_\_\_\_\_, constituting a quorum, when among other business, the following was transacted:

**ORDER AUTHORIZING SUIT TO COMPEL COMPLIANCE WITH THE REVISED RULES OF HARRIS COUNTY, TEXAS FOR ONSITE SEWERAGE FACILITIES, THE TEXAS HEALTH AND SAFETY CODE, THE TEXAS WATER CODE AND AUTHORIZING LITIGATION EXPENSES**

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

	Yes	No	Abstain
Judge Robert Eckels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. El Franco Lee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Sylvia R. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Jerry Eversole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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, the Harris County Public Infrastructure Department, Permit Division has conducted an investigation at or near the properties located at 2323 Lauder Road and at 215 Reidland Road, Harris County, Texas (Precinct 1) and

WHEREAS Carol Ann Norra is the owner of the properties located at 2323 Lauder Road and at 215 Reidland Road in Harris County, Texas and

WHEREAS the Harris County Public Infrastructure Department, Permit Division



Has determined that the septic system located at 2323 Lauder Road and at 215 Reidland Road is defective and that on numerous occasions sewage has been discharged from the septic system in a manner that may cause the contamination of groundwater or surface water, the attraction of vermin and/or the breeding of insects;

WHEREAS, the identified conditions at 2323 Lauder Road and at 215 Reidland Road violate The Revised Rules of Harris County Texas for Onsite Sewerage Facilities, Texas Health & Safety Code Chapters 341, 343 and 366 (Vernon 1992 & Supp. 2002), and the Texas Water Code § 26.121 (Vernon 2002);

WHEREAS, the Harris County Public Infrastructure Department, Permit Division has notified the County Attorney that Carol Ann Norra is violating the provisions of these rules and statutes and has requested that the County Attorney take the necessary legal action to obtain an injunction compelling Carol Ann Norra to comply with the law and to seek civil penalties for its violation;

THEREFORE, IT IS ORDERED that the County Attorney is authorized to file a suit on behalf of Harris County, Texas, against Carol Ann Norra, as well as any other person or entity that has caused, suffered, allowed, or permitted the offending activities. Pursuant to Texas Civil Practices & Remedies Code Annotated §6.001, the County Attorney shall be exempt from filing a bond to obtain an injunction.

IT IS FURTHER ORDERED AND RESOLVED 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 require compliance with the law, and to finally dispose of the suit by obtaining compliance as authorized by applicable law as he deems appropriate.

IT IS FURTHER ORDERED AND RESOLVED that the County Attorney is authorized to hire expert witnesses and other consultants and to expend the amount of \$500.00 as initial expenses in the case, which amount includes, but is not limited to, funds for court reporter fees, expert fees and expenses, discovery costs, and any other reasonable and necessary expenses.

All fund transfers necessary to accomplish the above are hereby ordered to be made.

All such costs and fees should be charged to the general fund.

No. \_\_\_\_\_

<b>HARRIS COUNTY, TEXAS</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiff</b>	§	
	§	
vs.	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>CAROL ANN NORRA</b>	§	
<b>Defendant</b>	§	<b>___ JUDICIAL DISTRICT</b>

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

Harris County, Texas, plaintiff, complains of Carol Ann Norra, defendant. Carol Ann Norra owns mobile home parks at 205 Reidland Road and 2323 Lauder Road, Harris County, Texas. For years, sewage has been illegally discharged at these sites, creating a serious health hazard to the citizens of Harris County and to the environment. This discharge of sewage violates multiple public health and environmental protection laws. Additionally, the defendant has failed to comply with state standards for public drinking water systems.

**DISCOVERY**

1. Harris County will conduct discovery under Level 1 of Texas Rule of Civil Procedure 190.2. Pursuant to Texas Rule of Civil Procedure 194, plaintiff requests that the defendant disclose, within 50 days of service of this petition and request, the information or material described in Rule 194(a) - (k).

**PARTIES**

2. Plaintiff **Harris County, Texas**, is a political subdivision of the State of Texas and is authorized to bring this action by virtue of authority granted under Texas Water Code §7.351 (Vernon 2000).

3. The **Texas Commission on Environmental Quality (TCEQ)** is a necessary and indispensable party to this suit.<sup>1</sup> Service on the TCEQ is not necessary at this time.

4. Defendant **Carol Ann Norra** is the owner of the mobile home parks located at 205 Reidland Road and 2323 Lauder Road. She may be served at 205 Reidland Road, Crosby, Texas 77532.

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<sup>1</sup> Tex. Water Code Ann. §7.353 (Vernon 2000).

## **JURISDICTION AND VENUE**

5. The court has jurisdiction over this case pursuant to Texas Water Code §7.351 (Vernon 2000). Venue is proper in Harris County because Harris County is the county in which the violations occurred. Texas Water Code §7.105(c)(Vernon. 2000).

## **VIOLATIONS**

6. Carol Ann Norra owns and operates mobile home parks at 205 Reidland Road, and 2323 Lauder Road, Harris County, Texas. Since at least February 6, 1997, Ms. Norra has caused, suffered, allowed, or permitted the discharge of raw sewage at these locations. In addition, she has allowed sewage to contaminate surrounding properties and has discharged sewage into, or adjacent to, water in the state.

7. The defendant has violated the Texas Water Code as she has caused, suffered, allowed, or permitted the discharge of a waste in violation of Texas Water Code §26.121. Section 26.121 specifically prohibits the discharge of sewage<sup>2</sup> into or adjacent to a water in the state<sup>3</sup> without authorization by TCEQ.

8. The conditions at 205 Reidland Road and 2323 Lauder Road violate the “Minimum Standards of Sanitation and Health Protection Measures” contained in Chapter 341 of the Texas Health and Safety Code. Under Health & Safety Code §341.091, defendant has created a public health nuisance by:

- a) Creating a condition or place that is a breeding place for flies and that is in a populous area;
- b) Allowing sewage to be discharged to the surface of the ground through improper maintenance of an on-site sewage facility; and
- c) By creating and maintaining an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

9. The conditions at 205 Reidland Road and 2323 Lauder Road violate the prohibition on public nuisances contained in Chapter 343 of the Texas Health and Safety

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<sup>2</sup> “Sewage” is defined at §26.001(7) of the Water Code as: waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

<sup>3</sup> “Water in the state” is defined at §26.001(5) of the Water Code as: groundwater, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

Code. Under Health & Safety Code §343.011(3), defendant has created a public health nuisance by maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests.

10. The defendant operates public drinking water systems at 205 Reidland Road and 2323 Lauder Road. 30 T.A.C. 290.46 mandates the minimum acceptable operating practices for public drinking water systems. The defendant has violated these standards by:

- a) Failing to continuously maintain an acceptable disinfectant residual during the treatment process and throughout the distribution system (30 T.A.C. 290.46(d));
- b) Failing to operate and maintain the disinfection facilities such that a free chlorine residual of 0.2 mg/l minimum disinfectant residual is in each finished water storage tank and in the far reaches of the distribution system at all times (30 T.A.C. 290.46(2)(a));
- c) Failing to have certified personnel under the direct supervision of a certified water works operator (30 T.A.C. 290.46(e)); and
- d) Failing to sample the drinking water and test these samples for harmful bacteria.

#### **CIVIL PENALTIES**

11. A person or entity who violates any provision of the Texas Water Code, the Texas Health and Safety Code, or any rule, order, or permit of the TCEQ is subject to a civil penalty of not less than \$50 nor more than \$25,000 for each day of each violation.<sup>4</sup> Each day of a continuing violation is a separate violation.<sup>5</sup>

#### **INJUNCTIVE RELIEF**

12. Harris County is entitled to injunctive relief from continuing violations or the threat of violations. Pursuant to the Texas Water Code, this Court may grant Harris County, without bond or other undertaking, any prohibitory or mandatory injunction the facts of this case warrant.<sup>6</sup> Harris County alleges that the defendant has been violating state law since at least February 6, 1997 and seeks civil penalties for each day between February 6, 1997 and the date of trial. See Exhibit "A", Affidavit of Larry Smahall.

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<sup>4</sup> Texas Water Code §7.102 (Supp. 2002).

<sup>5</sup> Texas Water Code §7.103 (Vernon 2000).

13. Harris County seeks temporary and permanent injunctive relief directing defendant to immediately shut down the operation of the mobile home parks at 205 Reidland Road and 2323 Lauder Road.

14. In the alternative, Harris County seeks injunctive relief ordering Carol Ann Norra to:

- a) stop the illegal discharge of sewage from 205 Reidland Road and 2323 Lauder Road;
- b) install new septic systems at both locations;
- c) pump and haul all existing sewage to a site that is legally authorized by the State of Texas to accept and dispose of sewage;
- d) ensure that each load of sewage is accurately manifested using a non-hazardous waste control ticket by requiring defendant to maintain appropriate records and deliver a copy of each non-hazardous waste control ticket to the Harris County Attorney's Office within five (5) days after transportation of the sewage;
- e) hire a certified water works operator to operate the public drinking water systems at these locations;
- f) sample the drinking water monthly for the presence of harmful bacteria in the water;
- g) maintain a free chlorine residual of between .2 mg/l and 3 mg/l in the drinking water; and
- h) Provide a written monthly report to the Harris County Attorney's Office detailing all steps taken by the defendant to comply with the temporary injunction.

15. Plaintiff also seeks permanent injunctive relief to insure the defendant's properties remain in compliance with state law.

#### **PRAYER**

16. For these reasons, plaintiff prays for the following:

- a) that citation issue in due form of law against defendant;
- b) that the Court issue a temporary injunction against the defendant to bring her properties into compliance with state law;

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<sup>6</sup> Texas Water Code §7.032 (Vernon 2000).

- c) that upon final trial in this cause, the Court grant civil penalties against defendant, within the range allowed by law and issue a permanent injunction to insure her properties remain in compliance with state law;
- d) that upon final trial in this cause, the Court grant Harris County and TCEQ their reasonable attorneys' fees and that all costs be assessed against defendant; and
- e) that the Court grant such other and further relief to which plaintiff may be justly entitled.

Respectfully submitted,

MIKE STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
Assistant County Attorney  
SBN 01920350  
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FAX - (713) 755-2680

**ATTORNEYS FOR PLAINTIFF  
HARRIS COUNTY, TEXAS**

Cause No. 2003-10164

HARRIS COUNTY, TEXAS, et al.,	§	IN THE DISTRICT COURT OF
	§	
PLAINTIFFS,	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
CAROL ANN NORRA, et al.,	§	
	§	
DEFENDANT	§	55th JUDICIAL DISTRICT

**PLAINTIFFS' THIRD AMENDED ORIGINAL PETITION**

Now come Plaintiffs Harris County, Texas, the Texas Commission on Environmental Quality, and the Texas Department of Health, and file this Plaintiffs' Third Amended Original Petition, and would show the Court as follows.

**I. DISCOVERY**

1.1 Plaintiffs intend to conduct discovery under the Level 2 Discovery Plan, as provided by Rule 190.3 of the Texas Rules of Civil Procedure.

**II. PARTIES**

2.1 Plaintiff Harris County, Texas ("Harris County", or "the County"), is a political subdivision of the State of Texas.

2.2 Plaintiff Texas Commission on Environmental Quality ("TCEQ", or the "Commission") is an official agency of the State of Texas and, pursuant to Texas Water Code § 7.351 and Texas Health and Safety Code § 341.048(d), is a necessary and indispensable party to this suit.

2.3 Plaintiff Texas Department of Health ("TDH", or the "Department") is an official agency of the State of Texas and, pursuant to Texas Health and Safety Code § 341.092(e), is a

necessary and indispensable party to this suit.

2.4 Defendant Carol Ann Norra, a/k/a Carol N. Norra a/k/a Carol Norra, a/k/a Ann Norra, a/k/a Carol N. Beckwith, a/k/a Carol Ann Beckwith, a/k/a Carol M. Beckwith, a/k/a Carol A. Beckwith, a/k/a Carol A. Beckelbith, a/k/a Carol Manning, is an individual who does business as North Fork Mobile Home Park and previously did business as Lauder Mobile Home Park and who has already been served with process in this cause.

2.5 Defendant Albert Manning, an individual who resides in the state of Louisiana, was named as a Defendant in that cause because Defendant Carol Ann Norra previously said that he owned one of the mobile home parks at issue in this cause. Defendant Carol Ann Norra has now sworn in her deposition and Defendant Albert Manning has now sworn in his affidavit that Albert Manning never did own any facilities at issue in this cause, and accordingly, all claims against Defendant Albert Manning have been non-suited without prejudice.

### **III. JURISDICTION AND VENUE**

3.1 The Court has jurisdiction over this case pursuant to TEX. WATER CODE ANN. § 7.351 and TEX. HEALTH & SAFETY CODE ANN. §341.048(c). Venue is proper in Harris County, Texas, because Harris County is the county in which the violations occurred. TEX. WATER CODE ANN. §7.105(c); TEX. HEALTH & SAFETY CODE ANN. §341.048(f)(3); *Id.*, §341.092(g).

### **IV. BACKGROUND**

4.1 Defendant Carol Ann Norra (“Norra”) owns and operates the Lauder Mobile Home Park, located at 2323 Lauder Road in Harris County, Texas, including the public drinking water system and the wastewater treatment system that serve that location. During the pendency



of this suit, Defendant Norra claims to have sold the Lauder Mobile Home Park at some time in January 2004, along with its drinking water and wastewater systems. By means of a foreclosure sale deed dated July 6, 2004, however, Defendant Norra reclaimed ownership of the Lauder Mobile Home Park. Defendant Norra also owns and operates, and at all times relevant to this lawsuit, owned, the North Fork Mobile Home Park, located at 205 Reidland Road in Harris County, Texas, including the public drinking water system and the wastewater treatment system that serve that location. As alleged below in more detail, both public drinking water systems and both wastewater systems are in significant violation of the state statutes and rules that regulate those respective systems, and have been in violation for years; further, the conditions created by the poor construction and operation of each wastewater system, including the repeated discharge of sewage onto the surface of the ground, constitute a public nuisance.

4.2 Defendant Norra has been the subject of at least one TCEQ administrative enforcement action for violations of the Texas Health and Safety Code and the TCEQ rules regarding public drinking water systems. As a result of that enforcement action, a Default Order (the “Order”, or the “Default Order”) was issued by the Commission against Defendant Norra in Docket No. 1998-0594-PWS-E. The Order is final and no longer appealable, is in all respects proper and valid, and remains in force. The Order requires that Defendant Norra take certain actions that she has not taken and that she pay an administrative penalty of \$4,969.00, which she has not paid. A copy of the Order is attached to this petition as **Exhibit A** and is incorporated as if set forth here in full.

4.3 The County, the Commission, and the Department seek temporary and permanent

injunctive relief and civil penalties against Defendant Norra for violations of the Texas Health and Safety Code, the Texas Water Code, the Order, and TCEQ rules, and the Commission also seeks unpaid administrative penalties assessed against Norra by the Commission. Plaintiffs also seek attorney's fees and court costs.

## **V. AUTHORITY**

5.1 The Commission is the state agency that is primarily responsible for regulating public water systems and also water quality, which includes wastewater. TEX. HEALTH & SAFETY CODE ANN. §§ 341.031(a) and 341.0315; TEX. WATER CODE ANN. § 26.011; TEX. WATER CODE ANN. §7.351; also, see generally Chapter 26, TEX. WATER CODE ANN.

5.2 The Commission is authorized to adopt rules to regulate health and safety issues involving public water systems. TEX. HEALTH & SAFETY CODE ANN. § 341.031(a); TEX. WATER CODE ANN. § 5.103.

5.3 The Commission has adopted rules regulating public water systems; those rules are found at 30 TEX. ADMIN. CODE, Chapter 290.

5.4 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 a statute. *Id.*, § 7.101.

5.5 Both the Commission and the County, which initiated this suit, are authorized to bring suit for civil penalties and injunctive relief to enforce the State's drinking water and water quality statutes and rules. TEX. HEALTH & SAFETY CODE ANN. § 341.048(c); TEX. WATER CODE ANN. §§ 7.105 and 7.351(a). The Commission is a necessary and indispensable party to any such

suit brought by the County. TEX. HEALTH & SAFETY CODE ANN. § 341.048(c); TEX. WATER CODE ANN. § 7.353.

5.6 Both the Department and the County are authorized to bring suit for civil penalties and injunctive relief to enforce the State's statutes that prohibit public health nuisances. TEX. HEALTH & SAFETY CODE ANN. § 341.092(d). The Department is a necessary and indispensable party to any such suit brought by the County. TEX. HEALTH & SAFETY CODE ANN. § 341.092(e).

5.7 Plaintiffs are not required to pay a filing fee or other security for costs and are not required to pay a bond prior to the Court granting an injunction in this cause. TEX. CIV. PRAC. & REM. CODE ANN. § 6.001; TEX. HEALTH & SAFETY CODE ANN. § 341.048(g); *Id.*, § 341.092(h).

## **VI. DRINKING WATER VIOLATIONS—LAUDER**

### **A. Bacteriological Samples**

6.1 Further, in regards to the said **Lauder Mobile Home Park Water System**, Defendant Norra has caused, suffered, allowed, or permitted the failure to submit water samples from that system for bacteriological analysis, in repeated and continuing violation of TEX. HEALTH AND SAFETY CODE ANN. § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.46(b) and 290.109, for the months of July 1999, November 1999, December 1999, January 2000, February 2000, March 2000, April 2000, May 2000, June 2000, July 2000, August 2000, September 2000, October 2000, November 2000, December 2000, January 2001, February 2001, March 2001, April 2001, May 2001, June 2001, July 2001, August 2001, September 2001, October 2001, November 2001, December 2001, February 2002, June 2002, July 2002, September 2002, October 2002, November 2002, December 2002, January 2003, and March 2003.

## **B. System Capacities**

6.2 Further, in regards to the said **Lauder Mobile Home Park Water System**, Defendant Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding the minimum capacities of components of public water systems: failure to provide a minimum total pressure tank capacity of 50 gallons per connection, in continuing violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(A)(ii), from at least June 29, 2000, until the present, or in the alternative, in continuing violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(E)(ii), from at least June 29, 2000, until the present.

## **C. Additional Violations**

6.3 Further, in regards to the said **Lauder Mobile Home Park Water System**, Defendant Norra has caused, suffered, allowed, or permitted the following additional violations of the Commission's rules regarding public water systems:

- (a) use of a well as a public drinking water supply, which well is located within 50 feet of a septic tank, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(A), from at least June 29, 2000, until the present;
- (b) failure to operate the disinfection equipment so as to maintain a minimum free chlorine residual of 0.2 milligrams per liter throughout the distribution system at all times, in violation of 30 TEX. ADMIN. CODE § 290.46(d)(2), on at least June 29, 2000, February 11, 2003, March 6, 2003, May 5, 2003, May 6, 2003, June 6, 2003, June 12, 2003, June 20, 2003, July 18, 2003, July 30, 2003, August 5, 2003, August 12, 2003, August 20, 2003, August 25, 2003, and December 19, 2003;

- (c) failure to provide a flow measuring device (master meter) for each well, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(N), from at least June 29, 2000, until the present;
- (d) failure to protect each pressure tank with an intruder-resistant fence with lockable gates, in continuing violation of 30 TEX. ADMIN. CODE § 290.43(e), from at least May 5, 2003, until the present;
- (e) failure to post a legible sign at all water system production, treatment, and storage facilities stating the name of the water system and an emergency telephone number where a responsible official can be contacted, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(t), from at least June 29, 2000, until the present;
- (f) failure to install all electrical wiring in securely mounted conduit, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(v), from at least June 29, 2000, until the present;
- (g) failure to maintain the grounds around the well in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water, in that Defendant has failed to control the growth of grass and other plants in the vicinity of the well, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(m), from at least May 5, 2003, until the present;
- (h) failure to maintain the system facilities to ensure the good working condition of the Schraeder valve on the pressure tank, in continuing violation of 30 TEX. ADMIN. CODE

§ 290.46(m), from at least May 5, 2003, until the present;

(i) failure to provide the well with a well casing vent, in continuing violation of 30

TEX. ADMIN. CODE § 290.41(c)(3)(K), from at least June 29, 2000, until the present;

(j) failure to provide a functional concrete sealing block around the casing of the well, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(J), from at least May 5, 2003, until the present; and

(k) failure to operate the water system in such a way as to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions, in violation of 30 TEX. ADMIN. CODE § 290.46(r), on at least March 6, 2003, May 6, 2003, May 8, 2003, June 12, 2003, July 18, 2003, July 30, 2003, August 5, 2003, August 25, 2003, September 4, 2003, September 9, 2003, October 14, 2003, November 4, 2003, and December 19, 2003.

## **VII. DRINKING WATER VIOLATIONS—NORTH FORK**

### **A. Bacteriological Samples**

7.1 Further, in regards to the said **North Fork Mobile Home Park Water System**, Defendant Norra has caused, suffered, allowed, or permitted the failure to submit water samples from that system for bacteriological analysis, in repeated and continuing violation of TEX. HEALTH AND SAFETY CODE ANN. § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.46(b) and 290.109, for the months of April 2000, May 2000, July 2000, November 2000, May 2001, June 2001, July 2001, August 2001, September 2001, October 2001, November 2001, December

2001, January 2002, May 2002, June 2002, July 2002, August 2002, September 2002, October 2002, November 2002, December 2002, January 2003, February 2003, and March 2003, and in repeated and continuing violation of Ordering Provision 2.a of the TCEQ Default Order for those same months.

### **B. System Capacities**

7.2 Further, in regards to the said **North Fork Mobile Home Park Water System**, Defendant Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding the minimum capacities of components of public water systems:

- (a) failure to provide a minimum total well capacity of 1.5 gallons per minute per connection, in continuing violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(A)(i), from at least September 15, 2000, until the present, or in the alternative, failure to provide a minimum total well capacity of one (1) gallon per minute per connection, in continuing violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(E)(i), from at least September 15, 2000, until the present; and
- (b) failure to provide a minimum total pressure tank capacity of 50 gallons per connection, in continuing violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(A)(ii), from at least September 15, 2000, until the present, or in the alternative, in continuing violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(E)(ii), from at least September 15, 2000, until the present.

### **C. Additional Violations**

7.3 Further, in regards to the said **North Fork Mobile Home Park Water System**,

Defendant Norra has caused, suffered, allowed, or permitted the following additional violations of the Commission's rules regarding public water systems:

- (a) failure to operate the disinfection equipment so as to maintain a minimum free chlorine residual of 0.2 milligrams per liter throughout the distribution system at all times, in violation of 30 TEX. ADMIN. CODE § 290.46(d)(2), on at least the following dates: May 1, 2001, October 10, 2001, July 24, 2002, September 11, 2002, September 12, 2002, October 2, 2002, April 24, 2003, May 12, 2003, June 30, 2003, July 8, 2003, August 15, 2003, August 21, 2003, August 27, 2003, October 16, 2003, and July 1, 2004;
- (b) provision to the public, without the written approval of the Commission, of drinking water that contains aluminum in excess of 0.2 milligrams per liter and contains manganese in excess of 0.05 milligrams per liter, in continuing violation of TEX. HEALTH AND SAFETY CODE ANN. § 341.031(a) and 30 TEX. ADMIN. CODE § 290.118, from at least October 10, 2001, until the present;
- (c) failure to operate the water system in such a way as to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions, in violation of 30 TEX. ADMIN. CODE § 290.46(r), on at least September 15, 2000, September 11, 2002, September 12, 2002, January 8, 2003, May 6, 2003, May 12, 2003, May 20, 2003, August 21, 2003, and July 1, 2004;
- (d) failure to completely cover the hypochlorination solution container to prevent the entry of dust, insects, and other contaminants, in continuing violation of 30 TEX. ADMIN. CODE § 290.42(e)(5), on at least January 8, 2003;



- (e) failure to provide a flow measuring device (master meter) for each well, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(N), from at least September 15, 2000, until the present;
- (f) failure to protect each well unit with an intruder-resistant fence with lockable gates, or a locked, ventilated well house, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(O), from at least January 8, 2003, until at least February 24, 2004;
- (g) failure to enclose the pressure maintenance facilities (pressure tank) with an intruder-resistant fence with lockable gates, in continuing violation of 30 TEX. ADMIN. CODE § 290.43(e), from at least October 10, 2001, until the present;
- (h) failure to post a legible sign at all water system production, treatment, and storage facilities stating the name of the water system and an emergency telephone number where a responsible official can be contacted, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(t), from at least September 15, 2000, until the present;
- (i) failure to install all electrical wiring in securely mounted conduit, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(v), from at least October 10, 2001, until the present;
- (j) failure to maintain the grounds around the wellhead in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(m), from at least January 8, 2003, until the present; and

(k) failure to maintain water distribution lines in a watertight condition, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(m)(4), on at least January 8, 2003.

### **VIII. SEWAGE AND NUISANCE VIOLATIONS--LAUDER**

8.1 Further, at the said **Lauder Mobile Home Park**, Defendant Norra caused, suffered, allowed, or permitted discharges<sup>1</sup> of sewage<sup>2</sup> into or adjacent to water in the state<sup>3</sup>, on or about the following dates, without any authorization from the Commission, in violation of Section 26.121(a)(1) of the Texas Water Code: three (3) separate discharges on or about February 5, 2003.

8.2 Further, by causing, suffering, allowing, or permitting the presence of sewage on the surface of the ground at the said **Lauder Mobile Home Park**, Defendant Norra caused, suffered, allowed, or permitted a public health nuisance. The following types of public health nuisances are present at the said location:

(a) a condition or place that is a breeding place for flies and that is in a populous area, TEX. HEALTH & SAFETY CODE ANN. § 341.011(1);

(b) sewage or human excreta deposited, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons, TEX.

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<sup>1</sup> “‘To discharge’ includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit or suffer any of these acts or omissions.” TEX. WATER CODE ANN. § 26.001(20).

<sup>2</sup> “‘Sewage’ means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.” *Id.*, § 26.001(7).

<sup>3</sup> “‘Water’ or ‘water in the state’ means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.” *Id.*, § 26.001(5).

HEALTH & SAFETY CODE ANN. § 341.011(5); and

(c) the maintenance of an overflowing septic tank so that the contents may be accessible to flies, TEX. HEALTH & SAFETY CODE ANN. § 341.011(11).

Each of the said public health nuisances at the **Lauder Mobile Home Park** existed as a direct result of the said three sewage discharges on or about February 5, 2003, and similar repeated discharges over the course of many months before that. More basically, however, the nuisance condition is the existence of the septic system itself and its inability to handle the flow that it receives. The septic system works properly only during periods of extended drought. Under normal climatic conditions, the septic system regularly discharges sewage to the surface of the ground and septic tanks repeatedly overflow.

8.3 Pursuant to TEX. HEALTH & SAFETY CODE ANN. § 341.012(a), a “person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.” Defendant Norra has known that the above-described public health nuisances have existed since at least April 28, 1999, but has not abated those nuisances. Therefore, with regards to the public health nuisances at the **Lauder Mobile Home Park**, Defendant Norra is and has been in continuing violation of TEX. HEALTH & SAFETY CODE ANN. § 341.012(a) from at least April 28, 1999, until the present.

8.4 Further, at the said **Lauder Mobile Home Park**, Defendant Norra caused, suffered, allowed, or permitted a public nuisance in that she has maintained the said premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests, in violation of Sections 343.011(b) and 343.011(c)(3) of the

Texas Health and Safety Code. The said public health nuisance has continued in violation of Sections 343.011(b) and 343.011(c)(3) of the Texas Health and Safety Code from at least April 28, 1999, until the present.

8.5 TEX. HEALTH & SAFETY CODE ANN. § 341.014(a) states:

“Human excreta in a populous area shall be disposed of through properly managed sewers. . . [or] treatment tanks. . . . The disposal system shall be sufficient to prevent the pollution of the surface soil, . . . the infection of flies or cockroaches, or the creation of any other public health nuisance.”

The septic system used for the disposal of human excreta at the said **Lauder Mobile Home Park** is not, and never has been sufficient to prevent the pollution of surface soil, the infection of flies or cockroaches, or the creation of any other public health nuisance. The said disposal system has been insufficient in the stated ways since at least April 28, 1999. Accordingly, Defendant Norra has been in continuing violation of TEX. HEALTH & SAFETY CODE ANN. § 341.014(a) from at least April 28, 1999, until the present.

### **IX. SEWAGE AND NUISANCE VIOLATIONS--NORTH FORK**

9.1 Further, at the said **North Fork Mobile Home Park**, Defendant Norra has caused, suffered, allowed, or permitted discharges<sup>4</sup> of sewage<sup>5</sup> into or adjacent to water in the state<sup>6</sup>, on or about the following dates, without any authorization from the Commission, in violation of Section 26.121(a)(1) of the Texas Water Code: February 4, 1997, one discharge; March 31, 1997, one discharge; April 7, 1997, two (2) separate discharges; May 19, 1997, one

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<sup>4</sup> See Footnote 1.

<sup>5</sup> See Footnote 2.

<sup>6</sup> See Footnote 3.

violation; June 17, 1998, one violation; April 28, 1999, eight (8) separate discharges; July 14, 1999, one discharge; August 18, 1999, one discharge; September 22, 1999, one discharge; March 1, 2000, one discharge; June 8, 2000, one discharge; March 28, 2001, two (2) separate discharges; January 10, 2002, three (3) separate discharges; September 12, 2002, eight (8) separate discharges; September 24, 2002, three (3) separate discharges; January 6, 2003, eight (8) separate discharges; and February 5, 2003, three (3) separate discharges.

9.2 Further, by causing, suffering, allowing, or permitting the presence of sewage on the surface of the ground at the said **North Fork Mobile Home Park**, Defendant Norra has caused, suffered, allowed, or permitted a public health nuisance. The following types of public health nuisances are present at the said location:

(a) a condition or place that is a breeding place for flies and that is in a populous area, TEX. HEALTH & SAFETY CODE ANN. § 341.011(1);

(b) sewage or human excreta deposited, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons, TEX. HEALTH & SAFETY CODE ANN. § 341.011(5); and

(c) the maintenance of an overflowing septic tank so that the contents may be accessible to flies, TEX. HEALTH & SAFETY CODE ANN. § 341.011(11).

Each of the said public health nuisances at the **North Fork Mobile Home Park** existed as a direct result of the said three sewage discharges on or about February 5, 2003, and similar repeated discharges over the course of many months before that. More basically, however, the nuisance condition is the existence of the septic system itself and its inability to handle the flow

that it receives. The septic system works properly only during periods of extended drought. Under normal climatic conditions, the septic system regularly discharges sewage to the surface of the ground and septic tanks repeatedly overflow.

9.3 Pursuant to TEX. HEALTH & SAFETY CODE ANN. § 341.012(a), a “person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists”. Defendant Norra has known that the above-described public health nuisances have existed since at least April 28, 1999, but she has not abated those nuisances. Therefore, with regards to the said public health nuisances at the **North Fork Mobile Home Park** Defendant Norra is and has been in continuing violation of TEX. HEALTH & SAFETY CODE ANN. § 341.012(a) from at least April 28, 1999, until the present.

9.4 Further, at the said **North Fork Mobile Home Park**, Defendant Norra has caused, suffered, allowed, or permitted a public nuisance in that she has maintained the said premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests, in violation of Sections 343.011(b) and 343.011(c)(3) of the Texas Health and Safety Code. The said public health nuisance has continued in violation of Sections 343.011(b) and 343.011(c)(3) of the Texas Health and Safety Code from at least April 28, 1999, until the present.

9.5 TEX. HEALTH & SAFETY CODE ANN. § 341.014(a) states:

“Human excreta in a populous area shall be disposed of through properly managed sewers. . . [or] treatment tanks. . . . The disposal system shall be sufficient to prevent the pollution of the surface soil, . . . the infection of flies or cockroaches, or the creation of any other public health nuisance.”

The septic system used for the disposal of human excreta at the said **North Fork Mobile Home**

**Park** is not, and never has been sufficient to prevent the pollution of surface soil, the infection of flies or cockroaches, or the creation of any other public health nuisance. The said disposal system has been insufficient in the stated ways since at least April 28, 1999. Accordingly, Defendant Norra has been in continuing violation of TEX. HEALTH & SAFETY CODE ANN. § 341.014(a) from at least April 28, 1999, until the present.

#### **X. CIVIL PENALTIES**

10.1 Any person who causes, suffers, allows, or permits a violation of Chapter 341, Subchapter C, of the Texas Health and Safety Code, or a rule adopted thereunder, “shall be assessed a civil penalty of not less than \$50 nor more than \$1,000.” TEX. HEALTH & SAFETY CODE ANN. § 341.048(b). In computing the penalty amount, each day of a continuing violation constitutes a separate violation subject to the stated penalty range. *Id.*

10.2 Each violation alleged in Sections VI or VII, above, is a violation of Chapter 341, Subchapter C, of the Texas Health and Safety Code, or a rule or order adopted thereunder, and is a violation caused, suffered, allowed, or permitted by Defendant Norra. Consequently, Plaintiffs request that upon trial Defendant Norra be assessed civil penalties within the statutory range for each such violation alleged against her and for each day of a continuing violation.

10.3 Any person who causes, suffers, allows, or permits a violation of Chapter 26 of the Texas Water Code, or a rule or permit adopted thereunder, “shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$25,000.” TEX. WATER CODE ANN. § 7.102. In computing the penalty amount, each day of a continuing violation constitutes a separate violation subject to the stated penalty range. *Id.*

10.4 Each violation alleged in Paragraphs 8.1 or 9.1, above, is a violation of Chapter 26 of the Texas Water Code, or a rule or permit adopted thereunder, and is a violation caused, suffered, allowed, or permitted by Defendant Norra. Consequently, Plaintiffs request that upon trial Defendant Norra be assessed civil penalties within the statutory range for each such violation alleged against her and for each day of a continuing violation.

10.5 Any person who causes, suffers, allows, or permits a violation of Chapter 341, other than Subchapter C, of the Texas Health and Safety Code, or a rule adopted thereunder, “shall be assessed a civil penalty of not less than \$10 nor more than \$200 for each violation and for each day of a continuing violation.” TEX. HEALTH & SAFETY CODE ANN. § 341.092(a) & (b).

10.6 Each violation alleged in Paragraphs 8.2, 8.3, 8.5, 9.2, 9.3 and 9.5, above, is a violation of Chapter 341 (other than Subchapter C) of the Texas Health and Safety Code, or a rule or order adopted thereunder, and is a violation caused, suffered, allowed, or permitted by Defendant Norra. Consequently, Plaintiffs request that upon trial Defendant Norra be assessed civil penalties within the statutory range for each such violation alleged against her and for each day of a continuing violation.

#### **XI. REQUEST FOR INJUNCTIVE RELIEF**

11.1 As described above, Defendant Norra has violated, is violating, and is threatening to violate the above-cited provisions of the Texas Health and Safety Code and the Texas Water Code and the rules and an order issued thereunder.

11.2 Unless restrained therefrom, Defendant Norra will continue to cause, suffer, allow, or permit the operation of the water and wastewater systems in a manner that violates the



Texas Health and Safety Code, the Texas Water Code, and the rules and order issued pursuant those statutes. There is no adequate remedy available at law.

11.3 Plaintiffs request that upon hearing a temporary injunction be issued pursuant to the Court's authority under Texas Health and Safety Code and the Texas Water Code, ordering Defendant Norra, her agents, employees, and all persons in active concert or participation with her to ensure that the said water and wastewater systems are operated in accordance with all provisions of the Texas Health and Safety Code, the Texas Water Code, and the rules and orders issued pursuant those statutes, that are cited above in this amended petition.

11.4 Plaintiffs request that upon final trial this Court grant permanent injunctive relief ordering Defendant Norra, her agents, employees, and all persons in active concert or participation with her to ensure that the said water and wastewater systems are operated in accordance with all provisions of the Texas Health and Safety Code, the Texas Water Code, and the rules and orders issued pursuant those statutes, that are cited above in this amended petition.

## **XII. REQUEST TO REDUCE ADMINISTRATIVE PENALTY TO JUDGMENT**

12.1 The TCEQ Default Order in Commission Docket No. 1998-0594-PWS-E, attached to the amended petition as **Exhibit A**, requires Defendant Norra to pay the Commission an administrative penalty of \$4,969.00. Defendant Norra has not made any payment towards that assessed amount. The Default Order is final, and the deadlines for appealing that order, for complying with that order, and for paying the assessed administrative penalty, have all passed. The entire \$4,969.00 amount owed by Defendant Norra therefore is a liquidated sum and is due and owing.

12.2 The Commission requests that, in addition to the civil penalties requested above, the Court grant judgment against Defendant Norra on the liquidated administrative penalties assessed in the Order in the amount of \$4,969.00, plus post-judgment interest.

## **XIII. REQUEST FOR ATTORNEYS' FEES AND COSTS**

13.1 The County is entitled to recover reasonable attorney's fees and costs in this case. TEX. WATER CODE § 7.354. Further, the Attorney General entitled to recover reasonable attorneys' fees and court costs on behalf of the State. TEX. GOV'T CODE ANN. § 402.006(c).

13.2 In the event of an appeal to the Court of Appeals or to the Supreme Court, the County and the Attorney General would be entitled to recover and collect additional reasonable attorneys' fees and court costs.

13.3 Plaintiffs request judgment including reasonable attorneys' fees and costs against Defendant.

## **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs Harris County, Texas, the Texas Commission on Environmental Quality, and the Texas Department of Health pray for the following:

- a. That upon trial, appropriate permanent injunctive relief be granted against Defendant Norra, as requested above;
- b. That Plaintiffs have judgment against Defendant for appropriate civil penalties within the range allowed by law, as requested above;
- c. That the TCEQ Default Order in Commission Docket No. 1998-0594-PWS-E be reduced to judgment in the amount of \$4,969.00 in favor of the Commission against Defendant Norra;
- d. That the Plaintiffs be awarded interest on their respective judgments at the legal rate until fully paid;
- e. That the County and the Attorney General each be awarded their reasonable attorney's fees and costs of court; and
- f. That Plaintiffs be awarded all such other and further relief, at law and in equity, to which they may show themselves justly entitled.

Respectfully submitted,

MIKE STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
CLARISSA K. BAUER  
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ATTORNEYS FOR PLAINTIFFS  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY  
AND  
TEXAS DEPARTMENT OF HEALTH

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Plaintiffs' Third Amended Original Petition, was served on Defendant Carol Ann Norra by electronic document transfer and by U. S. certified mail, return receipt requested, on the \_\_\_\_ day of \_\_\_\_\_, 2004, addressed to her attorney of record as follows:

Lawrence G. Dunbar  
Dunbar, Harder, & Benson, L.L.P  
One Riverway, Suite 1850  
Houston, Texas 77002

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CLARISSA K. BAUER

No. 2003-10164

**HARRIS COUNTY, TEXAS**  
**Plaintiff**

v.

**CAROL ANN NORRA**  
**Defendant**

§  
§  
§  
§  
§  
§  
§

**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**55th JUDICIAL DISTRICT**

**AGREED TEMPORARY INJUNCTION**

On April 11, 2003, plaintiff Harris County, Texas’ application for temporary injunction against Carol Ann Norra was set for hearing. Plaintiff, Harris County, Texas and defendant Carol Ann Norra announced to the Court that they had reached an agreement regarding a temporary injunction concerning the public water system and a wastewater system located at 205 Reidland Road and owned and operated by the defendant. The parties also agreed that this temporary injunction addresses only a part of the relief sought by the plaintiff and that plaintiff may seek such other relief as it may deem appropriate, including additional temporary injunctive relief involving the water and wastewater systems at 205 Reidland Road, as well as other locations.

The defendant hereby agrees to the adequacy of the identification of the laws, rules, standards, and orders described in this order, and hereby waives the necessity of copies of those documents being attached as exhibits to this temporary injunction. The parties submitted this Agreed Temporary Injunction to the Court for approval.

After reviewing the pleadings and considering the agreement of the parties, the Court finds that the Agreed Temporary Injunction should be granted and defendant, Carol Ann Norra, must immediately begin to do all things necessary to prevent any violations of the Texas Water Code and the Texas Health & Safety Code at 205 Reidland Road, Harris County, Texas (hereinafter referred to as the “site”).

IT IS HEREBY ORDERED that defendant Carol Ann Norra is temporarily enjoined as follows:

A. Defendant Carol Ann Norra shall immediately and thereafter comply with the following requirements regarding the public drinking water system located at the site:

1. Have a certified water works operator maintain the public drinking water system,
2. Initiate and execute a microbiological sampling program to routinely collect monthly bacteriological samples at active service connections, as required by 30 Tex. Admin. Code § 290.109;
3. Maintain written records of the results of the microbiological sampling program for at least five years;
4. Clean the sodium hypochlorite solution container at least once per month or more frequently as necessary to remove all sediment and particulates;
5. Post a legible sign located in plain view of the public providing the name of the water supply operator and an emergency telephone number where a responsible official can be contacted;
6. Seal the wellhead with a gasket or sealing compound to prevent possible contamination of the well water;
7. Once every week, sample the public drinking water distribution system to determine the chlorine residual;
8. Cause disinfection equipment to be operated so as to maintain a free chlorine residual no less than 0.2 mg/l<sup>1</sup> in the far reaches of the public drinking water distribution system at all times;
9. Cause disinfection equipment to be operated so as to maintain a free chlorine residual no greater than 4 mg/l at the finished water storage tank as a running annual average;
10. Maintain 35 psi<sup>2</sup> of pressure in the public drinking water distribution system at all times;
11. Maintain a written record of all maintenance and repairs done to the drinking water system;
12. Screen the well vent with 16-mesh or finer corrosion-resistant screen;

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<sup>1</sup> “mg/l” means milligrams per liter

<sup>2</sup> “psi” means pounds per square inch

13. Ensure the well vent faces downward; and
  14. Take steps to improve the overall site drainage.
- B. Within thirty (30) days after the date that this Order is signed by the Court, defendant Carol Ann Norra, shall complete and shall thereafter maintain compliance with the following requirements:
1. Install all water system electrical wiring (that is exposed to the elements) in a securely mounted conduit;
  2. Install a pressure release device on the pressure tank; and
  3. Maintain the drinking water system facilities at the site to ensure their good working condition.
- C. Defendant Carol Ann Norra is hereby prohibited from:
1. Creating a condition or place at the site that is a breeding place for flies and that is in a populous area;
  2. Discharging sewage to the surface of the ground through improper maintenance of an on-site sewage facility;
  3. Creating and maintaining an object, place, or condition at the site that is a possible and probable medium of disease transmission to or between humans; and
  4. Discharging<sup>3</sup> sewage<sup>4</sup> into or adjacent to a water in the state without written authorization from the Texas Commission on Environmental Quality.

IT IS FURTHER ORDERED that plaintiff, pursuant to Texas Water Code §7.032 and §7.351, is not required to file a bond in support of this order.

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<sup>3</sup> “Discharge” means to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

<sup>4</sup> “Sewage” means waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation.



IT IS FURTHER ORDERED that trial on the merits of this cause is set for \_\_\_\_\_ at \_\_\_\_\_  
a.m. / p.m.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
JUDGE PRESIDING

**AGREED:**

MICHAEL A. STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
SBN 01920350  
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ATTORNEYS FOR HARRIS COUNTY

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ATTORNEY FOR DEFENDANT CAROL ANN NORRA

Cause No. 2003-10164

HARRIS COUNTY, TEXAS, et al.,	§	IN THE DISTRICT COURT
	§	
PLAINTIFFS,	§	
	§	
V.	§	HARRIS COUNTY, TEXAS
	§	
CAROL ANN NORRA, et al.,	§	
	§	
DEFENDANTS	§	55th JUDICIAL DISTRICT
	§	
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**THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY’S AND THE TEXAS DEPARTMENT OF HEALTH’S FIRST SET OF REQUESTS FOR ADMISSION TO DEFENDANT CAROL ANN NORRA**

TO: **Carol Ann Norra**, Defendant, by and through her attorney of record, Lawrence G. Dunbar.

Pursuant to Texas Rule of Civil Procedure 198, Plaintiffs Texas Commission on Environmental Quality (“TCEQ” or the “Commission”) and Texas Department of Health (“TDH”) serve these requests for admission.

**INSTRUCTIONS**

(a) *Time for response.* Defendant must serve Plaintiffs with a written response to each request for admission within 30 days after service of the request.

(b) *Content of response.* Unless Defendant states an objection or asserts a privilege, Defendant must specifically admit or deny the request or explain in detail the reasons that Defendant cannot admit or deny the request. A response must fairly meet the substance of the request. Defendant may qualify an answer, or deny a request in part, only when good faith requires. Lack of information or knowledge is not a proper response unless Defendant states that a reasonable inquiry was made but that the information known or easily obtainable is insufficient

to enable Defendant to admit or deny. An assertion that the request presents an issue for trial is not a proper response.

(c) *Effect of failure to respond.* If a response is not timely served, the request is considered admitted without the necessity of a court order.

## **DEFINITIONS**

As used in these Requests for Admission, the following terms shall have the following meanings, unless the context requires otherwise:

1. “To **discharge**” includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

2. The “**Lauder Road Mobile Home Park**” means the mobile home park located at 2323 Lauder Road in Harris County, Texas.

3. The “**Lauder Road Mobile Home Park Water System**” means the public drinking water system that serves the residents of the Lauder Road Mobile Home Park.

4. The “**North Fork Mobile Home Park**” means the mobile home park located at 205 Reidland Road in Harris County, Texas.

5. The “**North Fork Mobile Home Park Water System**” means the public drinking water system that serves the residents of the North Fork Mobile Home Park.

6. “**TCEQ**” and “**the Commission**” mean the Texas Commission on Environmental Quality, and all its predecessor agencies, including the Texas Natural Resource Conservation Commission (“**TNRCC**”).

7. The “**TCEQ Default Order**” means the Default Order issued in Commission Docket No. 1998-0594-PWS-E.

8. “**TDH**” and “**the Department**” mean the Texas Department of Health.

9. “**Sewage**” means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

### **REQUESTS FOR ADMISSIONS**

#### **Admit or Deny the following:**

1. Admit that Defendant Carol Ann Norra has, from at least January 1, 1995, continuously until the present, owned the property known as the **Lauder Road Mobile Home Park**.

Response:

2. Admit that Defendant Carol Ann Norra has, from at least January 1, 1995, continuously until the present, owned the property known as the **North Fork Mobile Home Park**.

Response:

3. Admit that Defendant Carol Ann Norra has, from at least January 1, 1995, continuously until the present, owned the public drinking water system that serves the residents

of **Lauder Road Mobile Home Park**.

Response:

4. Admit that Defendant Carol Ann Norra has, from at least January 1, 1995, continuously until the present, owned the public drinking water system that serves the residents of the **North Fork Mobile Home Park**.

Response:

5. Admit that Defendant Carol Ann Norra has, from at least January 1, 1995, continuously until the present, owned the sewage septic system that serves the residents of **Lauder Road Mobile Home Park**.

Response:

6. Admit that Defendant Carol Ann Norra has, from at least January 1, 1995, continuously until the present, owned the sewage septic system that serves the residents of the **North Fork Mobile Home Park**.

Response:

7. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the failure to submit water samples from that system for bacteriological analysis, in repeated and continuing violation of TEX. HEALTH AND SAFETY CODE ANN. § 341.33(d) and 30 TEX. ADMIN. CODE §§ 290.46(b) and 290.109, for the months of July 1999, November 1999, December 1999, January 2000, February 2000, March 2000, April 2000, May 2000, June 2000, July 2000, August 2000, September 2000, October 2000, November 2000, December 2000, January 2001, February 2001, March 2001, April 2001, May 2001, June 2001, July 2001, August 2001, September 2001, October 2001, November 2001, December 2001, February 2002, June 2002, July 2002, September 2002, October 2002, November 2002, December 2002, January 2003, and March 2003.

Response:

8. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding the minimum capacities of components of public water systems: failure to provide a minimum total pressure tank capacity of 50 gallons per connection, in continuing violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(A)(ii), from at least June 29, 2000, until the present.

Response:

9. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: use of a well as a public drinking water supply, which well is located within 50 feet of a septic tank, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(A), from at least June 29, 2000, until the present.

Response:

10. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to operate the disinfection equipment so as to maintain a minimum free chlorine residual of 0.2 milligrams per liter throughout the distribution system at all times, in violation of 30 TEX. ADMIN. CODE § 290.46(d)(2), on at least June 29, 2000, March 6, 2003, April 29, 2003, May 5, 2003, May 6, 2003, and June 20, 2003.

Response:

11. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of

the Commission's rules regarding public water systems: failure to provide a flow measuring device (master meter) for each well, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(N), from at least June 29, 2000, until the present.

Response:

12. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to protect each pressure tank with an intruder-resistant fence with lockable gates, in continuing violation of 30 TEX. ADMIN. CODE § 290.43(e), from at least May 5, 2003, until the present.

Response:

13. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to post a legible sign at all water system production, treatment, and storage facilities stating the name of the water system and an emergency telephone number where a responsible official can be contacted, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(t), from at least June 29, 2000, until the present.

Response:



14. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to install all electrical wiring in securely mounted conduit, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(v), from at least June 29, 2000, until the present.

Response:

15. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to maintain the grounds around the well in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water, in that Defendant has failed to control the growth of grass and other plants in the vicinity of the well, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(m), from at least May 5, 2003, until the present.

Response:

16. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to maintain the system facilities to ensure the good working condition of the Schraeder valve on the pressure tank, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(m), from at least May 5, 2003, until the present.

Response:

17. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to provide the well with a well casing vent, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(K), from at least June 29, 2000, until the present.

Response:

18. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to provide a functional concrete sealing block around the casing of the well, in continuing violation of 30 TEX. ADMIN. CODE

§ 290.41(c)(3)(J), from at least May 5, 2003, until the present.

Response:

19. Admit that with regards to the said **Lauder Mobile Home Park Water System**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to operate the water system in such a way as to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions, in violation of 30 TEX. ADMIN. CODE § 290.46(r), on at least March 6, 2003, March 11, 2003, May 6, 2003, June 12, 2003, and June 20, 2003.

Response:

20. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the failure to submit water samples from that system for bacteriological analysis, in repeated and continuing violation of TEX. HEALTH AND SAFETY CODE ANN. § 341.33(d) and 30 TEX. ADMIN. CODE §§ 290.46(b) and 290.109, for the months of April 2000, May 2000, July 2000, November 2000, May 2001, June 2001, July 2001, August 2001, September 2001, October 2001, November 2001, December 2001, January 2002, May 2002, June 2002, July 2002, August 2002, September 2002,

October 2002, November 2002, December 2002, January 2003, February 2003, and March 2003, and in repeated and continuing violation of Ordering Provision 2.a of the TCEQ Default Order for those same months.

Response:

21. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding the minimum capacities of components of public water systems: failure to provide a minimum total well capacity of one (1) gallon per minute per connection, in continuing violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(E)(i), from at least September 15, 2000, until the present.

Response:

22. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding the minimum capacities of components of public water systems: failure to provide a minimum total pressure tank capacity of 50 gallons per connection, in continuing violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(E)(ii), from at least September 15, 2000, until the present.

Response:

23. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to operate the disinfection equipment so as to maintain a minimum free chlorine residual of 0.2 milligrams per liter throughout the distribution system at all times, in violation of 30 TEX. ADMIN. CODE § 290.46(d)(2), on at least the following dates: May 1, 2001, October 10, 2001, July 24, 2002, September 11, 2002, September 12, 2002, October 2, 2002, April 24, 2003, May 12, 2003, June 30, 2003, August 5, 2003, August 12, 2003, August 15, 2003, August 20, 2003, and August 25, 2003.

Response:

24. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: provision to the public, without the written approval of the Commission, of drinking water that contains aluminum in excess of 0.2 milligrams per liter and contains manganese in excess of 0.05 milligrams per liter, in continuing violation of TEX. HEALTH AND SAFETY CODE ANN. § 341.031(a) and 30 TEX.

ADMIN. CODE § 290.118, from at least October 10, 2001, until the present.

Response:

25. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to operate the water system in such a way as to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions, in violation of 30 TEX. ADMIN. CODE § 290.46(r), on at least September 15, 2000, October 10, 2001, September 11, 2002, September 12, 2002, January 8, 2003, May 6, 2003, May 12, 2003, May 20, 2003, June 12, 2003, August 5, 2003, August 15, 2003, and August 20, 2003.

Response:

26. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to completely cover the hypochlorination solution container to prevent the entry of dust, insects, and other contaminants, in continuing violation of 30 TEX. ADMIN. CODE § 290.42(e)(5), from at least January 8, 2003, until the present.

Response:

27. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to provide a raw water sampling cock (tap) on the discharge pipe of the well prior to any treatment, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(M), from at least January 8, 2003, until the present.

Response:

28. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to provide a flow measuring device (master meter) for each well, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(N), from at least Septmeber 15, 2000, until the present.

Response:

29. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following

violations of the Commission's rules regarding public water systems: failure to protect each well unit with an intruder-resistant fence with lockable gates, or a locked, ventilated well house, in continuing violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(O), from at least January 8, 2003, until the present.

Response:

30. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to post a legible sign at all water system production, treatment, and storage facilities stating the name of the water system and an emergency telephone number where a responsible official can be contacted, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(t), from at least September 15, 2000, until the present.

Response:

31. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to install all electrical wiring in securely mounted conduit, in continuing violation of 30 TEX. ADMIN. CODE



§ 290.46(v), from at least October 10, 2001, until at least January 8, 2003.

Response:

32. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to maintain the grounds around the wellhead in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(m), from at least January 8, 2003, until the present.

Response:

33. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to maintain water distribution lines in a watertight condition, in continuing violation of 30 TEX. ADMIN. CODE § 290.46(m)(4), from at least January 8, 2003, until the present.

Response:

34. Admit that with regards to the said **North Fork Mobile Home Park Water System**, Defendant Carol Ann Norra has caused, suffered, allowed, or permitted the following violations of the Commission's rules regarding public water systems: failure to conduct a distribution system materials survey and failure to submit to the Commission a valid sample site selection form for sampling for the presence of lead and copper in the water from the said water system, in continuing violation of 30 TEX. ADMIN. CODE § 290.117(b), from at least December 29, 1998, until the present.

Response:

35. Admit that with regards to the said **Lauder Mobile Home Park**, Defendant Carol Ann Norra caused, suffered, allowed, or permitted discharges of sewage into or adjacent to water in the state, on or about the following dates, without any authorization from the Commission, in violation of Section 26.121(a)(1) of the Texas Water Code: three (3) separate discharges on or about February 5, 2003.

Response:

36. Admit that by causing, suffering, allowing, or permitting the presence of sewage on the surface of the ground at the said **Lauder Mobile Home Park** as a direct result of three sewage discharges on or about February 5, 2003, and similar repeated discharges over the course

of many months before that, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following type of public health nuisance at the said location: a condition or place that is a breeding place for flies and that is in a populous area, in violation of TEX. HEALTH & SAFETY CODE ANN. § 341.011(1).

Response:

37. Admit that by causing, suffering, allowing, or permitting the presence of sewage on the surface of the ground at the said **Lauder Mobile Home Park** as a direct result of three sewage discharges on or about February 5, 2003, and similar repeated discharges over the course of many months before that, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following type of public health nuisance at the said location: sewage or human excreta deposited, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons, in violation of TEX. HEALTH & SAFETY CODE ANN. § 341.011(5).

Response:

38. Admit that by causing, suffering, allowing, or permitting the presence of sewage on the surface of the ground at the said **Lauder Mobile Home Park** as a direct result of three sewage discharges on or about February 5, 2003, and similar repeated discharges over the course

of many months before that, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following type of public health nuisance at the said location: the maintenance of an overflowing septic tank so that the contents may be accessible to flies, in violation of TEX.

HEALTH & SAFETY CODE ANN. § 341.011(11).

Response:

39. Admit that with regards to the sewage septic system that serves the said **Lauder Mobile Home Park**, the existence of the septic system itself and its inability to handle the flow that it receives is a nuisance.

Response:

40. Admit that with regards to the sewage septic system that serves the said **Lauder Mobile Home Park**, that septic system works properly only during periods of extended drought.

Response:

41. Admit that with regards to the sewage septic system that serves the said **Lauder Mobile Home Park**, under normal climatic conditions, that septic system regularly discharges sewage to the surface of the ground and septic tanks repeatedly overflow.

Response:

42. Admit that Defendant Carol Ann Norra has known that the public health nuisances regarding the sewage septic system that serves the said **Lauder Mobile Home Park** have existed since at least April 28, 1999, but that she has not abated those nuisances.

Response:

43. Admit that with regards to the sewage septic system that serves the said **Lauder Mobile Home Park**, Defendant Carol Ann Norra has caused, allowed, or permitted a public nuisance in that she maintained the said premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests, in violation of Sections 343.011(b) and 343.011(c)(3) of the Texas Health and Safety Code, from at least April 28, 1999, until the present.

Response:

44. Admit that the septic system used for the disposal of human excreta at the said **Lauder Mobile Home Park** is not, and never has been sufficient to prevent the pollution of surface soil, in continuing violation of TEX. HEALTH & SAFETY CODE ANN. § 341.012(a) from at least April 28, 1999, until the present.

Response:

45. Admit that the septic system used for the disposal of human excreta at the said **Lauder Mobile Home Park** is not, and never has been sufficient to prevent the infection of flies or cockroaches, in continuing violation of TEX. HEALTH & SAFETY CODE ANN. § 341.012(a) from at least April 28, 1999, until the present.

Response:

46. Admit that the septic system used for the disposal of human excreta at the said **Lauder Mobile Home Park** is not, and never has been sufficient to prevent the creation of a public health nuisance in continuing violation of TEX. HEALTH & SAFETY CODE ANN. § 341.012(a) from at least April 28, 1999, until the present.

Response:

47. Admit that with regards to the said **North Fork Mobile Home Park** sewage septic system, Defendant Carol Ann Norra caused, suffered, allowed, or permitted discharges of sewage into or adjacent to water in the state, on or about the following dates, without any

authorization from the Commission, in violation of Section 26.121(a)(1) of the Texas Water Code: April 28, 1999, seven (7) separate discharges; July 14, 1999, one discharge; August 18, 1999, one discharge; September 22, 1999, one discharge; March 1, 2000, one discharge; March 28, 2001, one discharge; January 10, 2002, two (2) separate discharges; September 12, 2002, one discharge; September 24, 2002, three (3) separate discharges; January 6, 2003, eight (8) separate discharges; and February 5, 2003, three (3) separate discharges.

Response:

48. Admit that by causing, suffering, allowing, or permitting the presence of sewage on the surface of the ground at the said **North Fork Mobile Home Park** as a direct result of three sewage discharges on or about February 5, 2003, and similar repeated discharges over the course of many months before that, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following type of public health nuisance at the said location: a condition or place that is a breeding place for flies and that is in a populous area, in violation of TEX. HEALTH & SAFETY CODE ANN. § 341.011(1).

Response:

49. Admit that by causing, suffering, allowing, or permitting the presence of sewage on the surface of the ground at the said **North Fork Mobile Home Park** as a direct result of

three sewage discharges on or about February 5, 2003, and similar repeated discharges over the course of many months before that, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following type of public health nuisance at the said location: sewage or human excreta deposited, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons, in violation of TEX. HEALTH & SAFETY CODE ANN. § 341.011(5).

Response:

50. Admit that by causing, suffering, allowing, or permitting the presence of sewage on the surface of the ground at the said **North Fork Mobile Home Park** as a direct result of three sewage discharges on or about February 5, 2003, and similar repeated discharges over the course of many months before that, Defendant Carol Ann Norra caused, suffered, allowed, or permitted the following type of public health nuisance at the said location: the maintenance of an overflowing septic tank so that the contents may be accessible to flies, in violation of TEX. HEALTH & SAFETY CODE ANN. § 341.011(11).

Response:

51. Admit that with regards to the sewage septic system that serves the said **North Fork Mobile Home Park**, the existence of the septic system itself and its inability to handle the



flow that it receives is a nuisance.

Response:

52. Admit that with regards to the sewage septic system that serves the said **North Fork Mobile Home Park**, that septic system works properly only during periods of extended drought.

Response:

53. Admit that with regards to the sewage septic system that serves the said **North Fork Mobile Home Park**, under normal climatic conditions, that septic system regularly discharges sewage to the surface of the ground and septic tanks repeatedly overflow.

Response:

54. Admit that Defendant Carol Ann Norra has known that the public health nuisances regarding the sewage septic system that serves the said **North Fork Mobile Home Park** have existed since at least April 28,1999, but that she has not abated those nuisances.

Response:

55. Admit that with regards to the sewage septic system that serves the said **North Fork Mobile Home Park**, Defendant Carol Ann Norra has caused, allowed, or permitted a public nuisance in that she maintained the said premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests, in violation of Sections 343.011(b) and 343.011(c)(3) of the Texas Health and Safety Code, from at least April 28, 1999, until the present.

Response:

56. Admit that the septic system used for the disposal of human excreta at the said **North Fork Mobile Home Park** is not, and never has been sufficient to prevent the pollution of surface soil, in continuing violation of TEX. HEALTH & SAFETY CODE ANN. § 341.012(a) from at least April 28, 1999, until the present.

Response:

57. Admit that the septic system used for the disposal of human excreta at the said **North Fork Mobile Home Park** is not, and never has been sufficient to prevent the infection of flies or cockroaches, in continuing violation of TEX. HEALTH & SAFETY CODE ANN. § 341.012(a) from at least April 28, 1999, until the present.

Response:

58. Admit that the septic system used for the disposal of human excreta at the said **North Fork Mobile Home Park** is not, and never has been sufficient to prevent the creation of a public health nuisance in continuing violation of TEX. HEALTH & SAFETY CODE ANN. § 341.012(a) from at least April 28, 1999, until the present.

Response:

59. Admit that Defendant Carol Ann Norra has not made any payment toward the \$4,969.00 assessed against her pursuant to TCEQ Default Order in Commission Docket No. 1998-0594-PWS-E.

Response:

60. Admit that the TCEQ Default Order in Commission Docket No. 1998-0594-PWS-E is final, and the deadlines for appealing that order, for complying with that order, and for paying the assessed administrative penalty, have all passed.

Response:

61. Admit that Defendant Carol Ann Norra still owes TCEQ the liquidated sum of \$4,969.00, pursuant to TCEQ Default Order in Commission Docket No. 1998-0594-PWS-E.

Response:

62. Admit that Plaintiff Harris County, Texas, is entitled to recover reasonable attorney's fees and court costs in this case pursuant to TEX. WATER CODE § 7.354.

Response:

63. Admit that the State of Texas, on behalf of Plaintiffs TCEQ and TDH, is entitled to recover reasonable attorney's fees and court costs in this case pursuant to TEX. GOV'T CODE ANN. § 402.006(c).

Response:

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

BARRY R. McBEE  
First Assistant Attorney General

EDWARD D. BURBACH  
Deputy Attorney General for Litigation

KAREN W. KORNELL  
Assistant Attorney General  
Chief, Natural Resources Division

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GRANT GURLEY  
SBN 08629000  
Assistant Attorney General  
Natural Resources Division  
P. O. Box 12548  
Austin, Texas 78711-2548  
Tel: (512) 463-2012  
Fax: (512) 320-0911

ATTORNEYS FOR PLAINTIFF  
TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing The Texas Commission on Environmental Quality's and The Texas Department of Health's First Set of Requests for Admission to Defendant Carol Ann Norra was served on the following persons by telephonic document transfer and U. S. certified mail, return receipt requested, on the 11th day of September, 2003, addressed to as follows:

Lawrence G. Dunbar  
Dunbar, Harder, & Benson, L.L.P  
One Riverway, Suite 1850  
Houston, Texas 77002

Clarissa Kay Bauer  
Assistant County Attorney  
1310 Prairie, Suite 940  
Houston, Texas 77002

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GRANT GURLEY

No. 2003-10164

**HARRIS COUNTY, TEXAS**  
**Plaintiff**

v.

**CAROL ANN NORRA**  
**Defendant**

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**55th JUDICIAL DISTRICT**

**HARRIS COUNTY'S SECOND REQUEST  
FOR PRODUCTION TO CAROL ANN NORRA**

To: Carol Ann Norra, defendant, through her attorney of record Lawrence G. Dunbar, Dunbar, Harder & Benson, One Riverway, Suite 1850, Houston, Texas 77056.

Plaintiff, Harris County, serves this request for production on defendant, pursuant to Texas Rule of Civil Procedure 196. Harris County requests the production of the documents and/or tangible items specified below which are in the custody and control of Carol Ann Norra, or any of her agents, auditors, employees or representatives. You must respond to each request separately, fully and in writing, and produce the requested documents for plaintiff Harris County’s inspection and copying, through Clarissa Kay Bauer, at 1310 Prairie, Suite 940, Houston, Texas 77002, within thirty (30) days after service.

**Definitions**

1. “Carol Ann Norra”, “defendant”, “you”, or “your” means Carol Ann Norra, her agents, representatives, and all other persons acting in concert with her, or under her control, whether directly or indirectly.
2. The “site” means 2323 Lauder Road, Harris County, Texas.
3. “Concerning” and “refer or relate to” when used with respect to a given subject, means, in whole or in part, directly or indirectly, any document that constitutes, contains, evidences, identifies, refers to, relates to, deals with, comments on, connects with, responds to, shows, describes, analyzes, reflects or is in any way pertinent to that subject, including, without limitation, documents concerning the presentation or existence of other documents.
4. “Communication” means any oral or written communication of which the defendant has knowledge, information, or belief.
5. “Discharge” means to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.
6. “Disposal system” means any system for disposing of waste, including sewer systems and treatment facilities.

7. “Document(s)” means all written, typed or printed matters and all magnetic or other records or documentation of any kind or description (including, without limitation, letters, correspondence, telegrams, memoranda, notes, records, minutes, contracts, agreements, records or notations of telephone or personal conversations, conference, inter-office communications, e-mail, microfilm, bulletins, circulars, pamphlets, photographs, facsimiles, invoices, tape recordings, computer printouts, and work sheets), including drafts and copies not identical to the originals, all photographs and graphic matter, however produced or reproduced, and all compilations of data from which information can be obtained, and any and all writings or recordings of any type or nature, in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, or other agents, whether or not prepared by you.
8. “Sewage” means waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation.
9. “Person” means an individual, natural person, association, joint venture, proprietorship, partnership, corporation, firm, municipality, governmental body, state or federal agency, or any other organization, business, or legal entity, and all predecessors or successors in interest or an agent or employee.
10. “Possession, custody, or control” means documents within defendant’s possession, custody or control, including documents within the possession, custody and control of defendant’s agents, auditors, employees, or representatives; documents that defendant has a legal right to obtain; and documents that defendant has placed in the temporary possession, custody or control of any third party.

### **Instructions**

- A. This Request for Production is served on you pursuant to Texas Rule of Civil Procedure 196. You must respond to each request separately, fully and in writing and provide the responses to plaintiff, Harris County, Texas, through Clarissa Kay Bauer, 1310 Prairie, Suite 940, Houston, TX 77002, within thirty (30) days after this Request for Production is served on you.
- B. You must state, with respect to each item or category of items in the request, any objection to the particular document or category of items, and either 1) that production, inspection, or other requested action will be permitted as requested; 2) that the requested items are being served with the response; 3) that production, inspection, or other requested action will take place at a specified time and place, if you are objecting to the time and place of production; or 4) that no items have been identified - after a diligent search – that are responsive to the request.
- C. You must produce the requested documents that are within your possession, custody and control for inspection and copying at the offices of Clarissa Kay Bauer, Harris County Attorney’s Office, 1310 Prairie, Suite 940, Houston, Texas 77002 no later than 5:00 p.m. on the first business day following the 30th day after service.
- D. Your responses should be typed or handwritten in the space provided. If a response requires more space, please attach an additional page and identify that response by the request number.



E. You are required to apply due diligence in seeking out the documents and things requested. The answer that you have no knowledge of the matter requested is only appropriate after reasonable efforts by you to obtain the requested information.

F. Magnetically or electronically stored data must be produced in Microsoft Word format.

**REQUEST FOR PRODUCTION**

1. Produce any receipts, pumping records, or manifests concerning the disposal of sewage at the site since February 6, 1997.

RESPONSE:

2. Produce any permits or other documents which authorize, or have authorized in the past, discharge of sewage from the site since February 6, 1997.

RESPONSE:

3. Produce all photographs, aerials, or videotapes depicting the site taken on or after February 6, 1997.

RESPONSE:

4. Produce all invoices, bills, or other billing materials for each expert who may testify at trial, and for each consulting expert whose mental impressions or opinions have been reviewed by a testifying expert.

RESPONSE:

5. Produce any correspondence sent between you, your agents, employees or representatives, and Harris County (including any of its agencies or departments) concerning the site or the subject matter of this lawsuit, for the period of time between February 6, 1997 and the present date.

RESPONSE:

6. Produce any correspondence sent between you, your agents, employees, or representatives, and Harris County (including any of its agencies or departments) concerning the (1) operation of the on-site sewage system facilities from the date the facilities were first owned, operated, or controlled by you to the present, and (2) any violations of state law that have or may have occurred from the date the site was first owned, operated, or controlled by you.

RESPONSE:

7. Produce any correspondence sent between you, your agents, employees, or representatives, and the State of Texas (including any of its agencies or departments) concerning the site or the subject matter of this lawsuit.

RESPONSE:

8. Produce all lease agreements or contracts for deed for the site from January 1, 2003 to the present.

RESPONSE:

9. Produce all documents relating to maintenance, repair, or operation of the drinking water system at the site from February 6, 1997 to the present.

RESPONSE:

10. Produce any documents including, but not limited to, receipts, bills, site plans, architect drawings, engineered drawings, original plans, modified plans, construction contracts, disposal receipts, permit applications, and/or permits, which refer or relate to the sewage system at the site, including those documents concerning modification of the sewage system.

RESPONSE:

11. Produce copies of all photographs and/or videotapes that depict developments or improvements made to the site since February 6, 1997.

RESPONSE:

12. Produce any contracts or agreements relating to maintenance, repair, or operation of the septic system at the site from February 6, 1997 to the present.

RESPONSE:

13. Produce all documents relating to sewage spills, which have occurred at the site from February 6, 1997 to the present date.

RESPONSE:

14. Produce copies of all written complaints or notices of violation regarding the site (regardless of whether the complaints were generated by a government entity, business, or private individual) since February 6, 1997.

RESPONSE:

15. Produce all surveys, plats, engineering schematics, architectural drawings, and diagrams of the site.

RESPONSE:

16. Produce all documents, certifications, or licenses for all drinking water works operators who maintained the drinking water system (for the time period February 6, 1997 until the present date) at the site.

RESPONSE:

Respectfully submitted,

MIKE STAFFORD  
Harris County Attorney

By: \_\_\_\_\_

Clarissa Kay Bauer  
Assistant County Attorney  
SBN 01920350  
1310 Prairie, Suite 940  
Houston, Texas 77002  
(713) 755-8282  
FAX - (713) 755-2680

**ATTORNEY FOR PLAINTIFF  
HARRIS COUNTY, TEXAS**

**Certificate of Service**

I certify that a copy of Harris County's Second Request for Production to Carol Ann Norra was sent to the following attorneys of record on September 17, 2003:

By Hand Delivery:

Lawrence G. Dunbar  
Dunbar, Harder & Benson, L.L.P.  
One Riverway, Suite 1850  
Houston, Texas 77506  
Fax (713) 782-5544

By Fax:

Grant Gurley  
Attorney General's Office  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Fax (512) 320-0911

\_\_\_\_\_  
Clarissa Kay Bauer

No. 2003-10164

**HARRIS COUNTY, TEXAS**  
**Plaintiff**

v.

**CAROL ANN NORRA**  
**Defendant**

§  
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§  
§  
§  
§  
§

**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**55th JUDICIAL DISTRICT**

**PLAINTIFF’S REQUEST FOR DISCLOSURE TO**  
**DEFENDANT CAROL ANN NORRA**

To: Carol Ann Norra, defendant, through her attorney of record Lawrence G. Dunbar, Dunbar, Harder & Benson, One Riverway, Suite 1850, Houston, Texas 77056.

Plaintiff, Harris County, Texas serves this request for disclosure upon Carol Ann Norra, pursuant to Texas Rule of Civil Procedure 194. Carol Ann Norra is requested to disclose, within thirty (30) days of service of this request, the information or material described in Rule 194.2 (a), (b), (c), (e), (f), (h), and (i). Carol Ann Norra is also requested to provide copies of relevant documents as required by Rule 194.4.

MICHAEL A. STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
Assistant County Attorney  
State Bar # 01920350  
1310 Prairie, Ste. 940  
Houston, Texas 77002  
(713) 755-8282  
FAX - (713) 755-2680

**ATTORNEYS FOR THE PLAINTIFF**  
**HARRIS COUNTY, TEXAS**

**Certificate of Service**

I certify that a copy of Harris County's Request for Disclosure to Carol Ann Norra was sent to the following attorneys of record on September 17, 2003:

By Hand Delivery:

Lawrence G. Dunbar  
Dunbar, Harder & Benson, L.L.P.  
One Riverway, Suite 1850  
Houston, Texas 77506  
Fax (713) 782-5544

By Fax:

Grant Gurley  
Attorney General's Office  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Fax (512) 320-0911

---

Clarissa Kay Bauer

No. 2004-27517

<b>HARRIS COUNTY, TEXAS, et al.</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiffs</b>	§	
	§	
<b>vs.</b>	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>RICKY L. GANDY, et al.</b>	§	
<b>Defendants</b>	§	<b>157th JUDICIAL DISTRICT</b>

**HARRIS COUNTY’S FIRST REQUEST FOR ADMISSIONS TO  
RICKY L. GANDY**

Plaintiff, Harris County, Texas serves the attached request for admissions upon Ricky L. Gandy pursuant to Texas Rule of Civil Procedure 198. The defendant must admit or deny each request, in writing, within 30 days after service.

**Definitions**

1. The word “and” means “and/or.”
2. The word “or” means “or/and.”
3. “16120 Market Street” means the property located at 16120 Market Street, Harris County, Texas.
4. “14807 Garrett Road” means the property located at 14807 Garrett Road, Harris County, Texas.
5. “Recyclable Material” means a material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials.
6. “Solid Waste” means garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, or mining.

**REQUEST FOR ADMISSIONS**

1. You currently own 16120 Market Street.

ADMIT OR DENY:

2. You currently own 14807 Garrett Road.

ADMIT OR DENY:

3. You have owned 16120 Market Street continuously from August 27, 2002 until the present date.

ADMIT OR DENY:

4. You have owned 14807 Garrett Road continuously from April 12, 2001 until the present date.

ADMIT OR DENY:

5. 16120 Market Street is located in Harris County, Texas.

ADMIT OR DENY:

6. 14807 Garrett Road is located in Harris County, Texas.

ADMIT OR DENY:

7. 16120 Market Street is located in the unincorporated portion of Harris County, Texas.

ADMIT OR DENY:

8. 14807 Garrett Road is located in the unincorporated portion of Harris County, Texas.

ADMIT OR DENY:



9. Halco Waste Container, Inc. does business at 16120 Market Street under the assumed name Old Orchard Trucking and Waste Systems.

ADMIT OR DENY:

10. Halco Waste Container, Inc. does business at 14807 Garrett Road under the assumed name Old Orchard Trucking and Waste Systems.

ADMIT OR DENY:

11. Five active pipelines run underneath 16120 Market Street.

ADMIT OR DENY:

12. You do not have a permit from the Texas Commission on Environmental Quality to operate a solid waste disposal site at 16120 Market Street.

ADMIT OR DENY:

13. You do not have a permit from the Texas Commission on Environmental Quality to operate a solid waste disposal site at 14807 Garrett Road.

ADMIT OR DENY:

14. You do not have a permit from the Texas Commission on Environmental Quality to store solid waste at 16120 Market Street.

ADMIT OR DENY:

15. You do not have a permit from the Texas Commission on Environmental Quality to store solid waste at 14807 Garrett Road.

ADMIT OR DENY:

16. Exhibit A is a true and correct copy of a Notification sent to the Texas Natural Resource Conservation Commission on your behalf.

ADMIT OR DENY:

17. You received a copy of the May 7, 2004 Violation Notice attached as Exhibit B.

ADMIT OR DENY:

18. You received a copy of the April 27, 2004 Violation Notice attached as Exhibit C.

ADMIT OR DENY:

19. You received a copy of the March 12, 2004 Violation Notice attached as Exhibit D.

ADMIT OR DENY:

20. You received a copy of the December 5, 2002 Violation Notice attached as Exhibit E.

ADMIT OR DENY:

21. You received a copy of the September 11, 2002 Violation Notice attached as Exhibit F.

ADMIT OR DENY:

22. You received a copy of the March 12, 2004 Violation Notice attached as Exhibit G.

ADMIT OR DENY:

23. You received a copy of the January 21, 2004 Violation Notice attached as Exhibit H.

ADMIT OR DENY:

24. Halco Waste Container, Inc. is not in good standing with the Texas Comptroller of Public Accounts.

ADMIT OR DENY:

25. Halco Waste Container, Inc. is not in good standing with the Texas Secretary of State.

ADMIT OR DENY:

26. Halco Waste Container, Inc.'s sales tax permit was suspended by the Texas Comptroller of Public Accounts in 2000.

ADMIT OR DENY:

27. Ricky L. Gandy has never paid Texas sales tax for sale of recyclable material.

ADMIT OR DENY:

28. Ricky L. Gandy's sales tax permit was closed by the Texas Comptroller of Public Accounts on December 31, 2000.

ADMIT OR DENY:

29. Ricky L. Gandy has never paid Texas sales tax for sale of recyclable material.

ADMIT OR DENY:

30. Old Orchard Trucking and Waste Systems' sales tax permit was closed on June 30, 2002.

ADMIT OR DENY:

31. Old Orchard Trucking and Waste Systems has never paid Texas sales tax for sale of recyclable material.

ADMIT OR DENY:

32. Halco Waste Container, Inc. does business under the assumed name “Old Orchard Trucking and Waste Systems”.

ADMIT OR DENY:

33. Exhibit I is a true and correct copy of a Fire Marshal’s Order issued to you.

ADMIT OR DENY:

34. Exhibit J is a true and correct copy of a Fire Marshal’s Order issued to you.

ADMIT OR DENY:

35. Exhibit K is a true and correct copy of a Fire Marshal’s Order issued to you.

ADMIT OR DENY:

36. Ricky Gandy’s signature is at the bottom of Exhibit I.

ADMIT OR DENY:

37. Exhibit L is a true and correct copy of an assumed name certificate for Old Orchard Trucking and Waste Systems.

ADMIT OR DENY:

38. You claim that the letter attached as Exhibit M grants you authority to operate a recycling facility.

ADMIT OR DENY:

39. The letter attached as Exhibit M is the letter from the State of Texas referenced in paragraph 2 of Defendants’ Motion to Quash Plaintiffs’ Request for Production to Third-Party.

ADMIT OR DENY:

40. You have received compensation from people or companies when you hauled recyclable materials from construction or demolition sites to 16120 Market Street.

ADMIT OR DENY:

41. You have received compensation from people or companies when you hauled recyclable materials from construction or demolition sites to 14807 Garrett Road.

ADMIT OR DENY:

Respectfully submitted,

MIKE STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
SBN 01920350  
1310 Prairie, Suite 940  
Houston, Texas 77002  
(713) 755-8282  
FAX (713) 755-2680

**ATTORNEYS FOR PLAINTIFF  
HARRIS COUNTY, TEXAS**

**Certificate of Service**

I certify that on July 21, 2004, I sent a copy of Plaintiff's First Request for Admissions to all parties listed below as indicated.

\_\_\_\_\_  
Clarissa Kay Bauer

**BY CERTIFIED MAIL**

Mr. Chad W. Dunn  
Riddle & Brazil, L.L.P.  
4201 FM 1960 West, Suite 550  
Houston, Texas 77068

**BY REGULAR MAIL**

Mary Smith  
Assistant Attorney General

HARRIS COUNTY, TEXAS, et al.  
Plaintiffs

§  
§  
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§

IN THE DISTRICT COURT OF

vs.

HARRIS COUNTY, TEXAS

RICKY L. GANDY, et al.  
Defendants

157th JUDICIAL DISTRICT

**HARRIS COUNTY’S FIRST SET OF INTERROGATORIES TO HALCO WASTE  
CONTAINER, INC.**

To: Halco Waste Container, Inc., through its attorney of record Mr. Chad W. Dunn, Riddle & Brazil, L.L.P., 4201 FM 1960 West, Suite 550, Houston, Texas 77068.

Plaintiff, Harris County, Texas serves the attached Interrogatories upon Halco Waste Container, Inc., through its attorney of record Mr. Chad W. Dunn, pursuant to Texas Rule of Civil Procedure 197. Halco Waste Container, Inc. must answer each interrogatory separately, fully, in writing, and under oath, within thirty (30) days after service and follow the instructions set out below.

**Definitions**

1. “Sites” is defined as the properties located at 16120 Market Street and 14807 Garrett Road in Harris County, Texas.
2. “Person” means any person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or other legal entity.
3. The word “and” means “and/or.”
4. The word “or” means “or/and.”
5. “You” or “your” means Halco Waste Container, Inc., its agents, partners, employees and persons acting in concert with it or under its control, whether directly or indirectly.
6. “Document” means all written, typed, reported, printed, recorded, taped, pictorial or graphic matter, magnetically or electronically stored data, and any other tangible permanent record or other data compilation from which information can be obtained or translated into reasonably usable form, however produced or reproduced, in whatever form maintained, that are in defendant's possession, custody or control.
7. “Possession, custody or control” means documents within defendant's possession, custody or control, including documents within the possession, custody and control of defendant's agents, auditors, employees, representatives or attorneys; documents that defendant

has a legal right to obtain; and documents that defendant has placed in the temporary possession, custody or control of any third party.

8. “Refer or relate to” when used with respect to a given subject, means any document that constitutes, contains, evidences, identifies, refers to, deals with, comments on, responds to, describes or is in any way pertinent to that subject, including, without limitation, documents concerning the presentation or existence of other documents.

9. “Recyclable Material” means a material that has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials.

10. “Generator” means any person or entity whose act or process produces a solid waste or recyclable material or first causes it to become regulated.

11. “Solid Waste” means garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and

### **Instructions**

A. These interrogatories are served on you pursuant to TEX. R. CIV. P. 197. You must answer each interrogatory separately, fully, in writing and under oath and provide the responses to Plaintiff, Harris County, Texas, by and through Clarissa Kay Bauer, Compliance Division, at 1310 Prairie, Suite 940, Houston, Texas 77002, within thirty (30) days after these interrogatories are served on you.

B. For each document or other requested information you assert is excludable from discovery, identify that document or other requested information. State the specific grounds for the claim of privilege or other ground for exclusion. Also, for each document, state the date of the document, the name, job title, and address of the person now in possession of the document; and a description of the subject matter of the document.

C. Your answers should be typed or handwritten in the space provided. If an answer requires more space, please attach an additional page and identify that answer by the interrogatory number.

D. Identify each person answering these interrogatories or supplying information to assist in the preparation of the answers to the interrogatories.

E. You are required to apply due diligence in seeking out the information requested. The answer that you have no knowledge of the matter requested is only appropriate after reasonable efforts by you to obtain the requested information.

F. Magnetically or electronically stored data must be produced in Microsoft Word format.

### **INTERROGATORIES**

1. If you believe that you have been the victim of bad faith, ill will, personal vindictiveness, or discrimination on the part of any employee of Harris County, state all grounds for your assertion, and all facts that support each ground.

ANSWER:

2. Identify (by name, address, and telephone number) all employees or independent contractors who have worked for you since January 1, 2002.

ANSWER:

3. Identify (by name, address, and phone number) the generators of recyclable material that you have recycled or accepted for recycling since January 1, 2002.

ANSWER:

4. Identify (by name, address, and phone number) the persons or entities who have purchased or accepted recyclable material from your sites since January 1, 2002.

ANSWER:

5. Identify (by name, address, and phone number) all persons or entities bringing recyclable material to the site since January 1, 2002.

ANSWER:



6 State the amount of gross revenue you received since January 1, 2002 from recycling activities at the sites.

ANSWER:

7. State the amount (in dollars) of non-recyclable solid waste you transported or accepted since January 1, 2002.

ANSWER:

8. State the amount (in cubic yards) of recyclable material you sold since January 1, 2002.

ANSWER:

9. State the amount (in dollars) of recyclable material you sold since January 1, 2002.

ANSWER:

10. State the amount of sales tax you reported since January 1, 2002 to the Texas Comptroller of Public Accounts for sales of recyclable material.

ANSWER:

11. State the identification number of the Texas sales and use tax permit used for sales of recyclable materials from the sites.

ANSWER:

12. Identify (by name, address, and phone number) the generators of non-recyclable solid waste that you have transported or accepted since January 1, 2002.

ANSWER:

13. State the amount (in cubic yards) of non-recyclable solid waste that you transported or accepted since January 1, 2002.

ANSWER:

Respectfully submitted,

MIKE STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
SBN 01920350  
1310 Prairie, Suite 940  
Houston, Texas 77002  
(713) 755-8282  
FAX - (713) 755-2680

**ATTORNEY FOR PLAINTIFF  
HARRIS COUNTY, TEXAS**

**Certificate of Service**

I certify that on July 15, 2004, I sent a copy of Plaintiff's First Set of Interrogatories to Halco Waste Container, Inc. to all parties listed below as indicated.

\_\_\_\_\_  
Clarissa Kay Bauer

**BY CERTIFIED MAIL**

Mr. Chad W. Dunn  
Riddle & Brazil, L.L.P.  
4201 FM 1960 West, Suite 550  
Houston, TX 77068

**BY REGULAR MAIL**

Mary Smith  
Assistant Attorney General

<b>HARRIS COUNTY, TEXAS, et al.</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>Plaintiffs</b>	§	
	§	
vs.	§	<b>HARRIS COUNTY, TEXAS</b>
	§	
<b>RICKY L. GANDY, et al.</b>	§	
<b>Defendants</b>	§	<b>157th JUDICIAL DISTRICT</b>

**Harris County’s First Request for Production to Halco Waste Container, Inc.**

Plaintiff, Harris County, Texas, serves this “Request for Production” upon Halco Waste Container, Inc., pursuant to Texas Rule of Civil Procedure 196.1. Plaintiff requests the production of the documents and/or tangible items specified below which are in the custody and control of Halco Waste Container, Inc., or any of its agents, auditors, employees or representatives. Halco Waste Container, Inc. must respond to each request fully and produce the requested documents for Plaintiff’s inspection and copying within thirty (30) days after service of this request.

Definitions

1. “Sites” mean 16120 Market Street and 14807 Garrett Road in Harris County, Texas.
2. “Recycle” means the use, reuse, or reclamation of solid waste.
3. “Solid Waste” means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities.
4. “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 water or ground water, or introduced into the environment in any other manner.
5. “Storage” means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.
6. “Person” means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or other legal entity.
7. The word “and” means “and/or.”
8. The word “or” means “or/and.”

9. “You” or “your” means: Halco Waste Container, Inc., its agents, employees and persons acting in concert with it or under its control, whether directly or indirectly, including any attorney.

10. “Document” means all written, typed, reported, printed, recorded, taped, pictorial or graphic matter, magnetically or electronically stored data, and any other tangible permanent record or other data compilation from which information can be obtained or translated into reasonably usable form, however produced or reproduced, in whatever form maintained, that are in defendant’s possession, custody or control.

11. “Possession, custody or control” means documents within defendant’s possession, custody or control, including documents within the possession, custody and control of defendant’s agents, auditors, employees, representatives or attorneys; documents that defendant has a legal right to obtain; and documents that defendant has placed in the temporary possession, custody or control of any third party.

12. “Refer or relate to” when used with respect to a given subject, means any document that constitutes, contains, evidences, identifies, refers to, deals with, comments on, responds to, describes or is in any way pertinent to that subject, including, without limitation, documents concerning the presentation or existence of other documents.

13. “Generator” means any person or company whose act or process produces a solid waste or first causes it to become regulated.

#### Instructions

A. The Request for Production is served on you pursuant to Texas Rule of Civil Procedure 196.1. You must respond to each request separately, fully and in writing thirty (30) days after this Request for Production is served on you.

B. You must state, with respect to each document or category of items in the requests, that inspection will be permitted as requested, or that objection is being made to the particular document or category of items. For each document or other requested information you assert is excludable from discovery, identify that document or other requested information. State the specific grounds for the claim of privilege or other grounds for exclusion. Also, for each document, state the date of the document, the name, job title, and address of the person now in possession of the document; and a description of the subject matter of the document.

C. You must produce the requested documents for inspection as they are kept in the usual course of business, or you shall organize and label them to correspond with the categories in the request.

D. Your responses should be typed or handwritten in the space provided. If a response requires more space, please attach an additional page and identify that response by the request number.

E. You are required to apply due diligence in seeking out the documents and things requested. The answer that you have no knowledge of the matter requested is only appropriate after reasonable efforts by you to obtain the requested information.

F. Unless otherwise noted, these requests are limited to documents or tangible things created after January 1, 2002.

**REQUEST FOR PRODUCTION**

1. Produce copies of all federal, state, and local permits obtained for, or relating to, the sites.

RESPONSE:

2. Produce copies of all documents you claim authorize you to recycle solid waste at the sites.

RESPONSE:

3. Produce copies of all documents you claim authorize you to store or dispose of solid waste at the sites.

RESPONSE:

4. Produce copies of all disposal receipts, manifests, or invoices obtained when any solid waste was removed from the sites.

RESPONSE:

5. Produce all photographs or videotapes of the sites taken on or August 27, 2002.

RESPONSE:

6. Produce all contracts or written agreements with waste hauling services or trucking companies regarding removal of solid waste from the sites.

RESPONSE:

7. Produce all contracts or written agreements for demolition services, if solid waste was brought to the sites as a result of the contract or written agreement.

RESPONSE:

8. Produce all correspondence sent between you and Harris County concerning the sites.

RESPONSE:

9. Produce all correspondence sent between you and the Texas Commission on Environmental Quality concerning the sites.

RESPONSE:

10. Produce all plats, surveys, engineering schematics, architects' drawings, or diagrams of the sites.

RESPONSE:

11. Produce all lease agreements or contracts for deed entered into between you and the owners of the sites.

RESPONSE:

12. Produce all notices of violation you have received from the Environmental Protection Agency, the Texas Commission on Environmental Quality (or its predecessor agencies), the Texas Department of Health, or any local governmental entity regarding conditions at the sites.

RESPONSE:

13. Produce all environmental assessments, environmental reports, or environmental evaluations (including any Phase 1 reports) that pertain to the sites.

RESPONSE:

14. Produce all written operating procedures, job-training manuals, written guidance, or procedure manuals given to employees of Halco Waste Container, Inc. after January 1, 2002 concerning handling of solid waste at the sites.

RESPONSE:

15. Produce all written operating procedures, job-training manuals, written guidance, or procedure manuals given to employees of Halco Waste Container, Inc. after January 1, 2002 concerning recycling at the sites.

RESPONSE:

16. Produce all written operating procedures, job-training manuals, written guidance, or procedure manuals given to employees of Halco Waste Container, Inc. after January 1, 2002 concerning fires at the sites.

RESPONSE:



17. Produce copies of all logs recording verbal complaints about the site (regardless of whether the complaints were generated by a governmental entity, business, or private individual).

RESPONSE:

18. Produce all documents, including but not limited to, invoices, receipts, vouchers, manifests, or inventory lists which relate to the storage, transfer, or disposal of any solid waste at the sites.

RESPONSE:

19. Produce all documents, including but not limited to, invoices, receipts, vouchers, manifests, or inventory lists which relate to the storage, transfer, or disposal of any wood material at the sites.

RESPONSE:

20. Produce all records documenting storage or processing of recyclable material at the sites.

RESPONSE:

21. Produce copies of phone records, logs, journals, emails, and letters documenting citizen complaints about the site.

RESPONSE:

22. Produce copies of all deeds by which you obtained title to the sites.

RESPONSE:

23. Produce all written agreements with companies or individuals from whom you obtained solid waste which was stored, recycled, transported to, or disposed of at the sites.

RESPONSE:

24. Produce all documents required by 30 Tex. Admin. Code § 328.5 (attached as Exhibit “A”) in connection with your activities at the sites.

RESPONSE:

25. Produce all documents which indicate your compliance with the requirements set forth in 30 Tex. Admin. Code § 328.4 (attached as Exhibit “B”).

RESPONSE:

26. Produce all documents indicating the type and/or volume of solid waste stored, recycled, transported to, or disposed of at the sites.

RESPONSE:

27. Produce all documents indicating the name of generators of solid waste stored, recycled, transported to, or disposed of at the sites.

RESPONSE:

28. Produce the four (4) pieces of paper requested as evidence by Harris County investigator Steve Hupp during his inspection of 16120 Market Street on June 22, 2004.

RESPONSE:

29. Produce all records required by 30 Tex. Admin. Code § 335 in connection with your activities at the sites.

RESPONSE:

30. Produce all photographs and videotapes taken of Harris County investigators investigating the sites.

RESPONSE:

31. Produce all manifests, trip tickets, waste classification documents, and records from the generator regarding the solid waste stored at 16120 Market Street in a black, roll-off box identified as #3068.

RESPONSE:

Respectfully submitted,

MIKE STAFFORD  
Harris County Attorney

By: \_\_\_\_\_  
Clarissa Kay Bauer  
SBN 01920350  
1310 Prairie, Suite 940  
Houston, Texas 77002  
(713) 755-8282  
FAX - (713) 755-2680

**ATTORNEY FOR PLAINTIFF  
HARRIS COUNTY, TEXAS**

**Certificate of Service**

I certify that on June \_\_\_\_\_, 2004, I sent a copy of Plaintiff's First Request for Production to Halco Waste Container, Inc. to all parties listed below as indicated.

**BY FAX TO (281) 580-6362 AND CERTIFIED MAIL**

Mr. Chad W. Dunn  
Riddle & Brazil, L.L.P.  
4201 FM 1960 West, Suite 550  
Houston, TX 77068

**BY FAX TO (512) 320-0911**

Lisa Sanders Richardson  
Assistant Attorney General

\_\_\_\_\_  
Clarissa Kay Bauer

## **I. PLEADINGS**

### **A. SPECIFICITY OF PLEADINGS; AMOUNT IN CONTROVERSY; SERVICE OF PROCESS; DEFECT IN PARTIES**

- Peek v. Equipment Service Co. of San Antonio, 779 S.W.2d 802 (Tex. 1989). The failure of plaintiff to state jurisdictional amount in controversy in its petition, without more, will not deprive the trial court of jurisdiction.
- Smith v. Chapman, 897 S.W.2d 399 (Tex. App.—Eastland 1995, no writ). Jurisdiction of county courts at law shall not be defeated by the aggregation of counterclaims by multiple defendants which exceed the amount in controversy limits for county courts at law.
- Standard Fire Ins. Co. v. Stigger, 635 S.W.2d 667 (Tex. Civ. App.—Dallas 1982, no writ). Statutory limitation on amount in controversy is not a limitation on the court's power to render judgment.
- State Farm Fire & Casualty Co. v. Griffin, 888 S.W.2d 150 (Tex. App. -Houston [1<sup>st</sup> Dist] 1994, no writ). So long as the original amount in controversy is within the jurisdictional limit, a county court of law may render judgment for an amount in excess of the statutory jurisdictional limit.

### **B. JURISDICTION; VENUE**

- Bell Stations, Inc. v. State, 590 S.W.2d 227 (Tex. Civ. App. —Austin 1979, writ dis'm'd). Statutory venue provision is jurisdictional in nature.
- Cook v. Cameron, 753 S.W.2d 137 (Tex. 1987). Judgment entered by a court in the absence of proper jurisdiction is void.
- Nix v. Nix, 797 S.W.2d 64 (Tex. App. —Corpus Christi 1990, no writ). Once jurisdiction has been properly acquired, no subsequent fact serves to defeat it.
- Padgett v. Mutual Building & Loan Assoc., 504 S.W.2d 535 (Tex. Civ. App.-Fort Worth 1971, no writ). In instances where no appeal bond, if required, or affidavit in lieu thereof, has been filed in the trial court, the appellate court never acquires jurisdiction.

## **II. INJUNCTIONS**

### **C. LIMITS OF COURT POWER AND MANDATORY INJUNCTION**

- Breithaupt v. Navarro County, 675 S.W.2d 335 (Tex. App.-Waco 1984, writ ref'd n.r.e.). To comply with the requirements of T.R.C.P. 163, an order granting an injunction or restraining order must specify why the violator is being enjoined. However, the Rule may be relaxed where public interest is involved and any doubt concerning compliance should be decided in favor of the public.
- City of Shoreacres v. State, 582 S.W.2d 211 (Tex. Civ. App.-Houston [1st Dist] 1979, writ ref'd n.r.e.). Court may impose civil penalties, mandatory and prohibitory injunctions, but may not direct municipality as to specific method or manner of performing action.
- Kiellander v. Smith, 652 S.W.2d 595 (Tex. App.-Tyler 1983, no writ). Mere fact that relief granted by temporary injunction would be same as on final hearing is not basis for refusing to grant the temporary injunction. If the law is being violated, the trial court has a duty to restful the violation.
- Priest v. Texas Animal Health Comm'n., 780 S.W.2d 874 (Tex. App.-Dallas 1989, no writ). Courts have a duty to enjoin violations of substantive law when those violations are conclusively established. Jury does not determine expediency, necessity or propriety of equitable relief.
- Rhodia, Inc. v. Harris County, 470 S.W.2d 415 (Tex. Civ. App.-Houston [1st Dist.] 1971, no writ). Water pollution is irreparable injury justifying temporary mandatory injunction before hearing on the merits.
- State v. Associated Metals & Minerals Corp., 635 S.W.2d 407 (Tex. 1982). Trial court lacks jurisdiction to modify or suspend agency permit.

### **D. BALANCING OF THE EQUITIES NOT REQUIRED WHERE VIOLATIONS ARE SHOWN**

- City of Corpus Christi v. Lone Star Fish & Oyster Co., 335 S.W.2d 621 (Tex. Civ. App.—San Antonio 1960, no writ). Oyster shucking plant in daily violation of zoning ordinance -- the rule with respect to the balancing of equities or hardship does not apply.

- State v. Texas Pet Foods, Inc., 591 S.W.2d 800 (Tex. 1979). Poultry plant rendering operator in violation of Clean Air Act, Water Quality Act, etc. "The Doctrine of Balancing the Equities has no application to this statutorily authorized injunctive relief."

#### **E. IMMINENT INJURY/IRREPARABLE INJURY NOT REQUIRED**

- Gulf Holding Co. v. Brazoria County, 497 S.W.2d 614 (Tex. Civ. App.—Houston [14th Dist. 1973, writ ref'd n.r.e.). Open Beaches Act violated by beachfront owner's barrier. Held, owner enjoined against interfering with removal of barrier by county, without necessity of showing irreparable injury and without balancing of equities.
- Houston Compressed Steel v. State, 456 S.W.2d 768 (Tex. Civ. App.—Houston [1st Dist] 1970, no writ). Injunction, without hearing, against outdoor burning of wood from old boxcars held valid, "...without the necessity of proving toxicity or injury or harm of any kind."
- Magnolia Petroleum v. State, 218 S.W.2d 555 (Tex. Civ. App.-Austin 1949, writ ref'd n.r.e.). Salt water from oil wells flowing into Guadalupe River was statutory and common law nuisance. No defense of imminent injury, irreparable injury, balancing of equities. Status quo was unpolluted river.
- Scott v. Rheudasil, 614 S.W.2d 626 (Tex. App.-Fort Worth 1981, no writ). "Status quo" to be preserved by mandatory injunction was removal of trailer house to conform to restrictive covenant.
- State v Texas Pet Foods, Inc., 591 S.W.2d 800 (Tex. 1979) Settled course of conduct continuing to or near time of trial, court "may assume that it will continue absent clear proof to the contrary" and issue the injunction.

#### **F. ROLE OF JURY**

- Citizens State Bank v. Caney Investments, 746 S.W.2d 477 (Tex. 1988). Parties to a hearing on a permanent injunction are entitled to a jury.

### **III. CIVIL PENALTIES**

#### **G. SCIENTER NOT REQUIRED**

- American Plant Food v. State, 587 S.W.2d 679 (Tex. Crim. App. 1979). Criminal prosecution under Chapter 26 of the Water Code —no scienter required.
- City of Galveston v. State, 518 S.W.2d 413 (Tex. Civ. App.-Houston [14th Dist] 1975, no writ). Discharges of sewage into bay...failure to complete chlorination facilities.
- Exxon v. State, 646 S.W.2d 536 (Tex. App.-Houston [1st Dist.] 1982, pet. ref'd). Considering the risks to public health posed by air pollution, to require anything other than a strict liability standard would deny the public the right to be protected from hazardous activities.
- State v. Houdaille Indus., Inc., 632 S.W.2d 723 (Tex. 1982). Uncertified motor carrier...knowledge and intent not elements of cause of action.
- State Bd. of Dental Examiners v. Friedman, 666 S.W.2d 363 (Tex. App.-Houston [14th Dist.] 1984, writ ref'd n.r.e.). Knowledge or intent may be required for civil penalties depending on the particular legislative history and wording of the statute.

#### **H. CONTINUING VIOLATIONS**

- State v. City of Greenville, 726 S.W.2d 162 (Tex. App.-Dallas 1986, writ ref'd n.r.e.). Expert testimony that eleven inspections of a landfill over about four years and conclusion after each that a violation existed was evidence of a continuing violation.
- State v. Harrington, 407 S.W.2d 467 (Tex. 1966) *cert, denied*, 386 U.S. 944 (1967). Civil penalties for drilling a slant hole oil well, each day well was "maintained and operated" so that it could produce on a moment's notice, regardless of whether it produced on a moment's notice, regardless of whether it produced oil on each day in the period. Knowledge or intent not relevant.
- State v. Texas Pet Foods, Inc., 591 S.W.2d 800 (Tex. 1979) Cooker was "available and operable," full time "capable" of operating and producing; therefore, continuous violation. Where the record discloses that violations were continuing up to or near the date of trial, the court may conclude the violation will continue in the near future unless there is convincing evidence shown to the contrary.



## **I. RANGE OF PENALTY — RELEVANT EVIDENCE**

- Alamo Nat'l Bank v. Kraus, 616 S.W.2d 908 (Tex. 1981). Factors for determining exemplary damages include: nature of the wrong, character of conduct, degree of culpability, public sense of justice and propriety.
- City of Galveston v. State, 518 S.W.2d 413 (Tex. Civ. App.- Houston [14th Dist] 1975, no writ) Contamination in other areas not relevant as to whether violation has occurred; refusal to admit pollution reports is within court's discretion (may be admissible as to mitigation of damages only - but was not requested for that purpose).
- Harrington v. State, 385 S.W.2d 411 (Tex. Civ. App.--Austin 1964) *rev'd on other grounds*, 407 S.W.2d 467 (Tex. 1966) *cert, denied*, 386 U.S. 944 (1967). The court, in assessing civil penalties, considered factors traditionally used in assessing exemplary damages, such as: the nature of the wrong, character of conduct and culpability of wrongdoer.
- Lloyd Frye Roofing Co. v. State, 524 S.W.2d 313 (Tex. Civ. App.-Dallas 1975, writ ref'd n.r.e.). Evidence of revenues and profits from particular plant causing pollution relevant to show gravity of violation and penalty needed to deter, only if such revenues and profits are directly related to violation.
- Ragsdale v. Progressive Voters League, 790 S.W.2d 77 (Tex. App.--Dallas 1990) *rev'd on other grounds*, 801 S.W.2d 880 (Tex. 1990) "Actual damages" as it relates to monetary damages generally have no relevance in an action to recover statutorily liquidated civil penalties.
- Southwestern Inv. Co. v. Neely, 452 S.W.2d 705 (Tex. 1970). Frequency of the wrong and amount to deter similar wrongs in the future.
- State v. City of Greenville, 726 S.W.2d 162 (Tex. App.- Dallas 1987, writ ref'd) The statutory language "... is subject to..." is mandatory and intends every violator to pay a civil penalty within the range stated in that section. The minimum and maximum civil penalties are mandatory, therefore leaving the trial court no discretion to go above or below the specified range.

## **IV. CORPORATIONS**

### **J. LIABILITY**

- Jonnet v. State, 877 S.W.2d 520 (Tex. App.-Austin 1994, writ denied). Officers and directors of a corporation whose charter has been forfeited by the Secretary of State are jointly and severally liable for administrative and civil penalties assessed during period of forfeiture regardless of when violation giving rise to penalties occurred.

- Light v. Wilson, 663 S.W.2d 813 (Tex. 1983) (Spears, concurring). Liability of corporate officers, etc. for individual participation in wrongful acts.
- Sema v. State, 877 S.W.2d 516 (Tex. App.-Austin 1994, writ denied). Debts need not be knowingly and consensually created by an officer for that officer to be held liable.
- State v. Malone, 853 S.W.2d 82 (Tex. App.—Houston [14th Dist] 1993, writ denied). President and plant manager held liable for environmental permit violation based on personal participation regardless of whether they were "owner" of permit.

## **V. DEFENSES**

### **A. AFFIRMATIVE DEFENSES**

- Williams v. State, 514 S.W.2d 772 (Tex. Civ. App.--Beaumont 1974, writ ref'd n.r.e.). Violation of Water Well Drillers Act. Held, Act is a valid delegation of authority by the legislature. Not penal-only injunctive relief and civil penalties. Knowledge or intent not required. Burden of proof is on defendant to establish statutory exclusion of liability (declaration of drought disaster area).

### **B. FIFTH AMENDMENT DEFENSES: DUE PROCESS, BURDEN OF PROOF**

- Jackson County Vacuum Truck Service, Inc. v. Lavaca-Navidad River Authority, 701 S.W.2d 12 (Tex. App.-Corpus Christi 1985, writ ref'd). State and local governments have authority to enter private land to investigate for water pollution.
- Lamb Co. Appraisal Dist. v. South Plains Hospital-Clinic, Inc., 688 S.W.2d 896 (Tex. App.-Amarillo 1985, writ ref'd n.r.e.). Texas recognizes only three standards of proof - beyond a reasonable doubt, clear and convincing evidence, and preponderance of the evidence.

### **C. FIFTH AMENDMENT DEFENSES: SELF INCRIMINATION, CRIMINAL JURISDICTION**

- Ex parte Butler, 522 S.W.2d 196 (Tex. 1975). Civil penalties in Solid Waste Disposal Act case are not quasi-criminal in nature. However, defendant may refuse to testify if answer would tend to incriminate him another law.

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- Ex parte Werblud, 536 S.W.2d 542 (Tex. 1976). Witness may not refuse to take the stand in civil case; but may refuse to answer individual questions. Attorney may interpose the privilege on behalf of witness in criminal contempt cases only.
- U.S. v. Ward, 448 U.S. 242, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980). Civil penalty for discharge of oil into navigable waters. Held, self-reporting does not violate Fifth Amendment; proceeding is not "quasi-criminal."

#### **D. LACHES/LIMITATIONS/ESTOPPEL**

- Capitol Rod & Gun Club v. LCRA, 622 S.W.2d 887 (Tex. App.-Austin 1981, writ ref'd n.r.e.). Unit of government exercising its governmental powers is not subject to estoppel or laches.
- City & County of Dallas Levee Improvement Dist. v. Carroll, 263 S.W.2d 307 (Tex. Civ. App.-Dallas 1953, writ ref'd n.r.e.). Municipal corporations immune.
- Clear Lake City Water Authority v. Winograd, 695 S.W.2d 632 (Tex. App.--Houston [1st Dist.] 1986, writ ref'd n.r.e.).
- Lancaster v. Gray County, 127 S.W.2d 385 (Tex. Civ. App.-El Paso 1939, no writ). Counties immune.
- Lewis Cox & Son, Inc. v. High Plains Underground Water Conservation District No. 1, 538 S.W.2d 659 (Tex. Civ. App.—Amarillo 1976 writ ref'd n.r.e.). State immune.
- McNutt v. Cox, 133 Tex. 409, 129 S.W.2d 626 (1939). Where a suit in the name of a government entity is brought for the use and benefit of a private citizen or creditor, the statute of limitation applies in the same manner as a suit brought by a "real party at interest."
- State v. Durham, 860 S.W.2d 63 (Tex. 1993). State in its sovereign capacity, unlike ordinary litigants, is not subject to defenses of limitations, laches or estoppel.

#### **E. DISCRIMINATORY ENFORCEMENT**

- Entex Oil & Gas Co. v. State, 560 S.W.2d 494 (Tex. Civ. App.-Texarkana 1977, writ ref'd n.r.e.) appeal dismissed, 439 U.S. 961 (1978) (for want of a substantial federal question). Fact that law may not be enforced against others does not affect its constitutionality.
- State v. Malone Service Co., 829 S.W.2d 763 (Tex. 1992). Defendant must show that selection for prosecution was invidious or in bad faith based upon impermissible

considerations such as race, religion or desire to prevent exercise of constitutional rights. Must show actual and purposeful discrimination against individual or suspect category; not merely that others have escaped enforcement. Discriminatory purpose is never presumed. Clear showing of intentional discrimination is required.

- U.S. v. Rice, 659 F.2d 524 (5th Cir. 1981). Tax protester case. Defendant must make prima facie showing that he has been singled out while others similarly situated have not, and that the selection is invidious or in bad faith, by resting on such impermissible considerations as race, religion or the desire to prevent the exercise of constitutional rights.

## **F. VAGUENESS/CONSTITUTIONALITY**

- National Ass'n of Independent Insurers v. Texas Dept. of Insurance, 888 S.W.2d 198 (Tex. App.-Austin 1994, no writ). Statute is fatally vague only when men of common intelligence must guess at what is required or when there is substantial risk of miscalculation. *See also* Texas Alcoholic Beverage Comm'n v. Mini, Inc., 832 S.W.2d 147 (Tex. App.-Houston [14th Dist] 1992, writ denied).
- Ex Parte Milton Dick Elliot, (Tex. Civ. App.—Austin, 1998). Trial court properly held sections of Texas Solid Waste Disposal Act are constitutional and do not constitute an unconstitutional delegation of legislative authority.

## **VI. NUISANCE**

### **G. PUBLIC NUISANCE DEFINED**

- Ellen v. City of Bryan, 410 S.W.2d 463 (Tex. Civ. App.-Waco 1967, writ ref'd n.r.e.). "Public nuisance" disturbs entire community or considerable portion thereof. Recurring temporary nuisance may be enjoined.
- Goldsmith v. State, 159 S.W.2d 534 (Tex. Civ. App.-Dallas 1942, writ ref'd). Pollution of a public watercourse is a "public nuisance," and may be enjoined regardless of other remedies.
- Maranatha Temple, Inc. v. Enterprise Prod. Co., 893 S.W.2d 92 (Tex. App.-Houston [1st Dist] 1994, writ denied).
- Parker v. City of Fort Worth, 281 S.W.2d 721 (Tex. Civ. App.-Fort Worth 1955, no writ). City may have injunction against fireworks stand outside but near city limits. "Public nuisance" need not affect whole community.

## **H. LIABILITY OF CREATOR OF NUISANCE**

- Hindman v. Teas Lime Co., 305 S.W.2d 947 (Tex. 1957). Landowner remains liable for damages despite subsequent leasing if he created nuisance, otherwise not.
- Lance v. City of Mission, 308 S.W.2d 546 (Tex. Civ. App.--San Antonio 1921, writ ref'd n.r.e.). City leased land to federal government, which built drainage ditch and created nuisance. The city did not alter ditch and plaintiff did not request abatement. Held, city not liable for nuisance. (Statute of limitations for injury to property is two years.)
- New Jersey v. Exxon Corp. and ICI America, Inc., 376 A.2d 1339 (N.J. Super. Ct. Ch. Div. 1977). Massive oil spills onto land over many years caused continuous migration of oil into state waters. Land sold to innocent purchaser. Held, migration is not "discharge." Mere ownership not enough; causation must be proved (no strict liability). Statute not effective retroactively. Usage in industrial area not a nuisance. Thus, purchaser not liable.
- New York v. Ole Olsen Ltd., 38 A.D. 967 (NY App. Div. 1972). Public nuisance from inadequate sewer systems in recreational homes adjacent to lake. Held, developers liable for damages and abatement; purchasers of homes can be compelled to cooperate.
- Wilkerson v. Garrett, 229 S.W. 666 (Tex. Civ. App.-San Antonio 1921, writ ref'd). Dam diverted water onto adjacent land. Creator of nuisance sold property. Held, both creator and purchaser liable for damages and abatement.

## **VII. EVIDENCE**

### **I. SCIENTIFIC EVIDENCE / HEARSAY**

- Missouri-Kansas-Texas R.R. Co. v. May, 600 S.W.2d 755 (Tex. 1980). Blood analysis admissible as business record even if it does not identify person taking blood or security measures to protect the chain of custody.
- Thomas v. Hogan, 308 F.2d 355 (4th Cir. 1962). Records routinely made of diagnoses and scientific tests done in regular course of business are entitled to admission under a presumption of trustworthiness. Expert may then draw conclusions from the records.
- Thomas v. State, 493 S.W.2d 832 (Tex. Crim. App.-1973). Lab report of heroin sample admissible as business record, even though custodian did not recall receipt of sample.

## **J. CHAIN OF CUSTODY/BUSINESS RECORDS**

- Beck v. State, 651 S.W.2d 827 (Tex. App. —Houston [1st Dist] 1983, no writ). Testimony showed beginning and end of chain of custody Gap in chain because doctor could no remember who took blood test. Held, admissible as business record.
- Jones v. State, 611 S.W.2d 64 (Tex. Crim. App. 1980). Lab test held inadmissible where supervisor did not perform the test and did not know if it was performed correctly.
- Norris v. State, 507 S.W.2d 796 (Tex. Crim. App. 1974). Supervisor of chemists may testify as to lab results. Custodian of records may explain contents. Both methods are available to the state.
- Missouri-Kansas-Texas R.R. Co. v. May, 600 S.W.2d 755 (Tex. 1980). Blood analysis admissible as business record even if it does not identify person taking blood or security measures to protect the chain of custody.

## **K. DEMONSTRATIVE EVIDENCE/SUMMARIES OF TESTIMONY**

- Speier v. Webster College, 616 S.W.2d 617 (Tex. 1981). Chart summarizing oral testimony may be admitted into evidence if it aids jury in recalling testimony.

## **VIII. ATTORNEY'S FEES AND COURT COSTS**

### **L. ATTORNEY'S FEES AND COURT COSTS FOR COUNTIES**

- Allen v. Crabtree, 936 S.W.2d 6 (Tex. App. —Texarkana [6th Dist] 1996). Costs for the copies of medical records fall within the prohibition for taxing copies as part of the bill of cost. Absent trial court statement on the record of good cause for allowing these costs, no rule or statute allows taxing as cost.

## **IX. CHARGE TO THE JURY**

### **M. SPECIAL ISSUE**

- Charge to the Jury, Trice v. State, 712 S.W.2d 842 (Tex. App.-- Waco 1986, no writ).
- Charge to the Jury, State v. City of Freeport.

