

CIVIL
ENVIRONMENTAL
ENFORCEMENT

ROCK OWENS

**Manager, Environmental Practice Group
Harris County Attorney's Office**

- The Harris County Attorney is charged with representing Harris County in civil matters. Most environmental enforcement by counties in Texas is via enforcement of State statutes and rules with some exceptions
- Most State level enforcement actions are initiated pursuant to Chapter 7 of the Water Code however we also enforce vis storm water (MS4) we also have Harris County Regulations

2 Tracks to Civil Enforcement

- 1. Harris County Regulations
- 2. Texas Water Code Chapter 7
- Sometimes they overlap

Harris County Storm Water Regs.

- **SECTION 1.02 – NON-STORM WATER DISCHARGES PROHIBITED**
- (a) No person shall discharge or cause to be discharged into the Municipal Separate Storm
- Sewer System (MS4) anything that is not composed entirely of storm water except the

STORM WATER REGULATION ENFORCEMENT

■ SECTION 3.01 – CIVIL ENFORCEMENT

If any person violates any section dealing with Storm Water Discharges Associated with Industrial Activity, the County Attorney may take whatever action is necessary to remedy the violation, including but not limited to filing suit

suit for civil penalties up to \$1,000 a day for each violation,

and to enjoin the violation.

Each day a violation continues is considered a separate violation for purposes of assessing the civil penalty.

Nothing in these Regulations precludes Harris County through the County Attorney's Office from seeking enforcement of state environmental laws pursuant to the Texas Water Code.

Other Regulations

- Development- Flood Plain Regulations
- Right-of-Way Regulations
- Septic System Regulations- Overlap with state rules
- Salvage Yard Regulations
- All authorized by statute with enforcement provision

Enforcement of State Statutes & Rules

Chapter 7: Suits by Local Governments

- may institute a civil suit under Subchapter D **in the same manner as the commission** in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

What does this mean?

...in the same manner as the Commission.

SAME MANNER

- Only the same type of suit previously file by the TCEQ?- historic precedent?
- Only the type of suit the Commission might bring if so inclined
- Regardless defense attorneys will argue that whatever criteria you have chosen, it is the wrong one

What determines when to go to
court?

1. Referral in form of a letter requesting representation from:

a. Harris County Pollution Control Services – industrial storm water

b. Harris County Public Infrastructure Department - construction site storm water

2. Approval from Commissioners Court: Section 7.352 of the Texas Water Code provides “...a local government may not exercise the enforcement power authorized by this subchapter unless its governing body adopts a resolution authorizing the exercise of the power.”

3. Almost all cases are complaint generated- No roaming teams of inspectors with some exceptions based on categories of business

4. Special Cases- SJRWPs, VW, Chrysler etc. HC recently joined Opioid Litigation

In almost every case we need a Commissioners Court Order

Presented to Commissioner's Court

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

JUN 12 2012
APPROVE MIC
Recorded Vol. _____ Page _____

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 June, 2012, with the following members present, to-wit:

Ed Emmett	County Judge
El Franco Lee	Commissioner, Precinct No. 1
Jack Morman	Commissioner, Precinct No. 2
Steve Radack	Commissioner, Precinct No. 3
R. Jack Cagle	Commissioner, Precinct No. 4

and the following members absent, to-wit: None, constituting a quorum, when among other business, the following was transacted:

ORDER AUTHORIZING COUNTY JUDGE TO EXECUTE AN AMENDED AND RESTATED FEE AGREEMENT WITH CONNELLY • BAKER • WOTRING L.L.P. AS SPECIAL COUNSEL FOR HARRIS COUNTY IN THE SUIT AGAINST VARIOUS DEFENDANTS ARISING OUT OF THE SAN JACINTO WASTE PITS.


Commissioner Morman introduced an order and made a motion that the same be adopted. Commissioner Cagle 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 Ed Emmett:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. El Franco Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Jack Morman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Steve Radack	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input checked="" 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, it would be proper for Harris County to sue various Defendants in State District Court as authorized by Chapter 7 of the Texas Water Code and other statutory or civil causes of action arising out of the pollution from the San Jacinto Waste Pits in Precinct 2 ("the Site");

WHEREAS, Harris County has previously issued a Resolution on December 20, 2011, authorizing the filing of suit against various defendants arising out of the Site; and

 T O'Rourke Submitted on 06/06/12 for C.Ct. Meeting of 06/12/12.

WHEREAS, on December 20, 2011, the Harris County Commissioners Court also authorized the Harris County Attorney to hire the law firm of Connelly • Baker • Wotring L.L.P. to assist the Harris County Attorney with the suit and further authorized the Judge to execute a contingency fee agreement with that firm; and

WHEREAS, on December 22, 2011, the Harris County Attorney filed suit against International Paper, Inc., McGinnes Industrial Maintenance Corporation, Waste Management, Inc. and Waste Management of Texas, Inc., styled *Harris County vs. International Paper*; Cause Number 2011-76724, in the District Court of Harris County, Texas, 295th Judicial District; and

WHEREAS, the Harris County Commissioners have agreed to amend and restate the contingency fee agreement with Connelly • Baker • Wotring L.L.P.

THEREFORE, IT IS ORDERED that in accordance with Texas Local Government Code Section 262.024(a)(4), Commissioners Court grants an exemption from competitive bidding and proposal procedures and that the County Judge is authorized to execute the attached Agreement between Harris County and Connelly • Baker • Wotring, L.L.P. for litigation for the reasons set forth in the Agreement and because there is a substantial need for this firm's legal services which cannot adequately be performed by attorneys and supporting personnel of Harris County or another public agency, nor can the legal services reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the representation; and

IT IS FURTHER ORDERED that all fees to be paid to Connelly • Baker • Wotring, L.L.P. are contingent upon the recovery of attorney's fees, damages and civil penalties as provided for in the Agreement and that no money shall be due or paid from the General Fund or any special fund under this Agreement.

2

Pre Trial

- Filing Original Petition:
- Perfecting Service of Process
- Request for Temporary Relief
- Discovery

Original Petition

2011-52524

Harris County Texas, *Plaintiff*

The State of Texas acting by and through the Texas Commission on Environmental Quality, *A Necessary and Indispensable Party*

vs.

PMSV River Oaks I.P., SF Properties, U.I.C., and Brazos Valley Hallmark Cleaners, Inc., *Defendants*.

PLAINTIFF HARRIS COUNTY TEXAS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Harris County Texas ("Plaintiff" or "Harris County") files this Original Petition. In support thereof, Harris County would show this Court as follows:

I. Introduction

1. Because of the problems associated with contamination from dry cleaners in Texas, the people of Texas passed laws in 2003 specifically to deal with the contamination caused by dry cleaner operations and to assist in protecting the water and other natural resources of the state.

2. While some dry cleaners have behaved as responsible corporate citizens and environmental stewards, many have not. Far too many have avoided complying with regulations that were designed to protect the public from the harmful chemicals and by-products of the dry cleaning process. Far too many have delayed or avoided cleaning their chemical discharges, and almost none have paid to remediate the effects of years or decades of leaking contaminants. The need to protect public health and to preserve Harris County's water from further pollution to

FILED
IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
SEP 03 2011
J. P. [Signature]
CLERK

216 JUDICIAL DISTRICT

COMPARATIVE FILE MARK: 8/17/2011

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What is the purpose of petition?

- **1. Notice:** places defendant and the public on notice of what laws the defendant is accused of violating.
- **2. Names:** parties, plaintiff, defendants and in our cases State of Texas (Necessary & Indispensable Party
- **3. Conduct:** what the defendant did to violate the law and when conduct occurred
- **4. Relief:** states the kind of relief plaintiff is seeking

Petition Requires Defendant

1. States a date and time for the defendant to respond to charges by filing a written answer
2. Certain kinds of defenses must be stated in writing, TRCP 94 some sworn
2. Failure to answer allows Plaintiff to move for a default judgment.

Temporary Order

TRO- Temporary Restraining Order;

- a. Emergency Order sometimes referred to as Cease & Desist- Sworn Petition
- b. Egregious Conduct
- c. It may be **ex parte**: In Harris County you must give notice of hearing
- d. Only lasts 14 days, renewed 1 time, must contain date for TI hearing of Trial
- e. Order enforceable by contempt

TI- Temporary Injunction:

- a. Service is required- Notice is not enough
- b. Sworn Pleading
- c. Full Adversarial Hearing on merits
- d. Must show substantial likelihood you will prevail at trial
- e. TI must contain a trial date; lasts until case is called to trial (vacated)
- e. Order is enforceable by contempt

What kind of cases warrant a TRO?

- The truck is discharging into a storm drain
TRO or TI?



Some factors to consider in asking for a TRO

- 1. Judges don't like to grant them unless they can give the defendant an opportunity to tell their story-
- 2. If Judge grants it he keeps the case- effects size of docket- really warranted this is not a problem but if there is any doubt, they will set it for a TI and punt
- 3. You will have to go back in 14 days or less. You can get one extension but there is no exception to this rule!

Unauthorized discharge?



Temporary Injunctions

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 _____, 2017 and the following members present, to-wit: _____

Ed Emmett County Judge
Franco Lee Commissioner, Precinct No.1
Jack Mormon Commissioner, Precinct No.2
Sue Radack Commissioner, Precinct No.3
Jack Cagle Commissioner, Precinct No.4

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

ORDER WITH FINING SENT TO COMPEL COMPLIANCE WITH ENVIRONMENTAL 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 Emmett	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Lee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Mormon	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Radack	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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 Pollution Control Services (PCS) has conducted multiple investigations at or near the property located at 14380 Beaumont Highway, Houston, Texas (Precinct 2) in Harris County (the site); and

Whereas the Quality Container and Environmental Services, L.L.C. (the company) operates a high pressure tank and other container wash at the site; and

Whereas the company releases into the air residual industrial and hazardous waste from the pressure washing process; and

- 1. This is a mini trial where the movant has the burden of showing it is likely to prevail at trial.
- 2. Lasts until the case is called to trial
- 3. Both parties put on their case
- 4. Amount of time given to put on the case is often severely restricted
- 5. Ruling subject to interlocutory appeal

Judge decides injunctive relief

Although a litigant has the right to a trial by jury in an equitable action, only ultimate issues of fact are submitted for jury determination. The judge or jury may decide the facts but the jury does not determine the expediency, necessity, or propriety of equitable relief.

- State v. Texas Pet Foods, Inc.
 - 591 S.W.2d 800, 803 (Tex. 1979)

Texas Water Code

- Water Code § 26.121
- Illegal discharges of sewage, municipal waste, recreational waste, industrial waste, and agricultural waste
- Civil Penalties between \$50 to \$25,000 for each day of each violation- The amount is determined by the trier of fact.

TEXAS WATER CODE 7.359

PENALTY FACTORS

Impacts on air quality,
water bodies, aquatic
wildlife and effected
persons,

Previous violations

Culpability including whether the violation could have been reasonably anticipated and avoided

Good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons

Economic benefit

Need for deterrence

Any other matters that
justice may require.