

Cause No. _____

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.

KMCO, LLC
Defendant.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

HARRIS COUNTY’S ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

Plaintiff, Harris County, Texas, files this Original Petition and Application for Temporary and Permanent Injunction in this environmental enforcement action complaining that KMCO, LLC (KMCO) caused, suffered, allowed, or permitted unauthorized air and water releases and nuisance odors from its chemical manufacturing facility in Harris County. Plaintiff seeks injunctive relief, civil penalties, court costs, and attorney’s fees.

1. DISCOVERY AND RELIEF REQUESTED

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

1.2. This case is not subject to the restrictions of expedited proceedings under Rule 169 because (1) Harris County seeks non-monetary injunctive relief and (2) Harris County’s claims for civil penalties are potentially in excess of \$200,000 but the maximum potential civil penalty is not more than \$1,000,000. Tex. R. Civ. P. 47(c)(4).

2. AUTHORITY TO SUE

2.1. 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, issued on November 12, 2013.

2.2. Harris County brings this cause of action on its own behalf and on behalf of the residents of Harris County, Texas, for injunctive relief and civil penalties under the authority granted in §§ 7.102 and 7.351(a) of the Texas Water Code.

3. PLAINTIFF

3.1. Plaintiff Harris County, Texas (Harris County) is a political subdivision of the State of Texas.

3.2. The State of Texas (the State), acting on behalf of the Texas Commission on Environmental Quality (TCEQ or Commission), is a necessary and indispensable party to this lawsuit pursuant to § 7.353 of the Texas Water Code.

4. DEFENDANT

4.1. KMCO, LLC (KMCO or Defendant) is a Delaware Limited Liability Company that does business in Harris County, Texas. It may be served with citation by serving its Registered Agent, Jeff L. McFerrin, at 16503 Ramsey Road, Crosby, Texas 77532, or wherever they may be found.

4.2. KMCO owns and operates a chemical manufacturing plant at 16503 Ramsey Road, Crosby, Texas 77532 (Facility).

5. JURISDICTION AND VENUE

5.1. This Court has jurisdiction over the case and venue is proper in Harris County because this is an action to enforce Chapter 382 of the Texas Health and Safety Code and the

Commission rules promulgated thereunder and all of the events or omissions giving rise to the claim occurred in Harris County. *See* Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) and Tex. Water Code § 7.105(c).

6. APPLICABLE LAW

TEXAS WATER CODE

6.1. Chapter 26 of the Texas Water Code governs Water Quality Control. The TCEQ “shall establish the level of quality to be maintained in, and control the quality of, the water in this state as provided by” Chapter 26. Tex. Water Code § 26.011.

Definitions

6.2. “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.* at § 26.001(5).

6.3. “Industrial Waste” means “waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.” *Id.* at § 26.001(11).

Unauthorized Discharges Prohibited

6.4. The Texas Water Code provides that “[e]xcept as authorized by the commission, no person may...discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state...” *Id.* at § 26.121(a).

THE TEXAS CLEAN AIR ACT

A. The Texas Health and Safety Code

Purpose

6.5. The Texas Clean Air Act (the Act) is found in Chapter 382 of the Texas Health and Safety Code. The purpose of the Act is to safeguard the State's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the aesthetic enjoyment of air resources by the public and the maintenance of adequate visibility. Tex. Health & Safety Code Ann. § 382.002 (West 2010).

Unauthorized Emissions Prohibited

6.6. Except as authorized by a Commission rule or order, the Act prohibits any person from causing, suffering, allowing, or permitting the emission of any air contaminant or the performance of any activity that causes or contributes to air pollution. *Id.* at § 382.085(a). In addition, a person may not cause, suffer, allow or permit the emission of any air contaminant or the performance of any activity in violation of Chapter 382 or of any Commission rule or order. *Id.* at § 382.085(b).

TCEQ Authorized to Adopt Rules

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

Definitions

6.8. "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or (B) interfere with the normal use or enjoyment of animal life, vegetation, or property. Tex. Health & Safety Code Ann. § 382.003(3).

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

B. The Texas Administrative Code

Regulatory Nuisance or Creating Air Pollution

6.10. 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. 30 Tex. Admin. Code § 101.4.

New Source Review Permits

6.11. TCEQ rules require, before any actual work is begun on a facility, a person who plans to construct a new facility or engage in the modification of an existing facility which may emit air contaminants into the air to either: (1) obtain a permit under 30 Tex. Admin. Code § 116.111,¹ (2) satisfy the conditions for a standard permit,² (3) satisfy the conditions for a flexible

¹ Control of Air Pollution by Permits for New Construction or Modification

² 30 T.A.C. §§ 116.601 – 116.620.

permit,³ (4) satisfy the conditions for facilities permitted by rule,⁴ or (5) satisfy the criteria for a de minimis facility.⁵ *Id.* at § 116.110(a).

General and Special Conditions

6.12. “Acceptance of a permit by an applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the Commission issued in conformity with the Texas Clean Air Act and the conditions precedent to the granting of the permit.” 30 Tex. Admin. Code § 116.115(b)(2)(H)(i).

Emissions Event Reporting

6.13. “As soon as practicable, but not later than 24 hours after the discovery of an reportable emissions event, the owner or operator of a regulated entity shall notify the Commission office for the region in which the regulated entity is located, and all appropriate local air pollution control agencies with jurisdiction, if the emissions event is reportable. *Id.* at § 101.201(a)(1)(B).

C. Air New Source Review Permit No. 9383

6.14. Defendant holds a number of active TCEQ permits for the Facility, including Air New Source Permits, Industrial and Hazardous Waste Permits, and Wastewater Permits. Defendant obtained Air New Source Permit 9383, attached as **Exhibit A**, on July 13, 2012.

6.15. Special Condition 13 of Permit 9383 states:

“All waste gas streams containing chemicals that are designated for control by scrubber shall at all times be routed to a scrubber designed in accordance with the engineering specifications submitted on January 30,

³ *Id.* at §§ 116.710 - 116.765.

⁴ *Id.* at § 106.

⁵ *Id.* at § 116.119.

1995 and operated in accordance with the specifications in Attachment B.”

D. Enforcement

Definition

6.16. A “person” includes “corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.” Tex. Gov’t Code § 311.005(2).

Civil Penalties, Injunctive Relief, and Costs

6.17. “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 statute.” Tex. Water Code § 7.101.

6.18. A person who violates the Texas Water Code, Texas Health and Safety Code, or a Commission permit, rule, or order, is liable for a civil penalty of not less than \$50 nor more than \$25,000 for each day of each violation. *Id.* at § 7.102. Each day of a continuing violation is a separate violation. *Id.*

6.19. Harris County is authorized to file suit for injunctive relief and civil penalties for violations of Chapter 7 of the Texas Water Code and Chapter 382 of the Texas Health and Safety Code, and Commission rules and orders promulgated under these statutes. *Id.* at §§ 7.105, 7.351.

6.20. Harris County is not required to pay a filing fee or other security for costs and is not required to pay a bond prior to the Court granting an injunction. Tex. Civ. Prac. & Rem. Code § 6.001.

6.21. Harris County is also entitled to recover its attorney’s fees, court costs and investigative costs in relation to this proceeding. Tex. Water Code § 7.108.

HARRIS COUNTY STORM WATER QUALITY REGULATIONS

Purpose

6.22. The purpose of the Harris County Storm Water Quality Regulations (Storm Water Regulations) “is to provide land use controls necessary to comply with Harris County’s [federal or state storm water permit], to protect human life and health and to avoid increasing pollutant levels associated with storm water.” Storm Water Quality Regulations Part A, § 1.03.

Definitions

6.23. “Discharge” means “the introduction or addition of any pollutant, storm water, or any other substance whatsoever into the MS4 or into the waters of the United States, or to cause, suffer, allow, or permit any such introduction or addition.” *Id.* at § 2.13.

6.24. “Municipal Separate Storm Sewer System” or “MS4” means the system of man-made conveyances owned or operated by a municipality, Harris County, or Harris County Flood Control District, and designed or used for collecting or conveying storm water and which is not used for collecting or conveying sewage. *Id.* at § 2.22.

Unauthorized Discharges into MS4 Prohibited

6.25. Part E, Section 1.02 of the Storm Water Regulations states that “[n]o 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.” 6.26. Part E, Section 4.01 of the Storm Water Regulations authorizes the County Attorney to file suit for civil penalties of up to \$1,000 per day for each violation of the Storm Water Regulations and to enjoin the violation. Each day a violation continues is a separate violation for purposes of assessing the civil penalty.

**2009 AGREED FINAL INJUNCTION AND PERMANENT INJUNCTION
NO. 2008-16597**

6.27. In 2009, Harris County, the State of Texas, and KMCO, Inc. entered into an Agreed Final Judgment and Permanent Injunction (“2009 AFJ”), attached as **Exhibit B**, ending a civil environmental enforcement suit brought against KMCO the previous year.

6.28. Section 4(a) of the 2009 AFJ states:

“Defendant is enjoined from violating the Texas Clean Water Act, set out in Texas Water Code § 26.121, and TPDES Permit Number WQ0002712000, the Texas Health and Safety Code, Chapter 382, and Title 30 of the Texas Administrative Code Chapter 116, which implements the Texas Clean Air Act, and the Texas Administrative Code, 20 TAC § 101.4, which sets out the requirements for nuisance violations.”

6.29. Section 4(a)2 of the 2009 AFJ requires that,

“[i]f an air release occurs on KMCO plant property with potential to cause nuisance odors or other off-site impacts, Defendant shall inform HCPHES [Harris County Public Health and Environmental Services] at 713-920-2831 (or after 5 pm the County Operator at 713-755-5000) as soon as possible upon learning of the release.”

1990 AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION NO. 87-33, 130

6.30. In 1990, Harris County, the Texas Air Control Board and Texas Water Commission, and KMCO, Inc. entered into an Agreed Permanent Injunction and Final Judgment (“1990 AFJ”), attached as **Exhibit C**, ending a civil environmental enforcement suit brought against KMCO in 1987.

6.31. Section I of the 1990 AFJ states:

“[KMCO is] enjoined from causing, suffering, allowing, or permitting the emission from the plant operated by Defendants at 16,503 Ramsey Road, Harris County, Texas, of any particulate matter, dust, fumes, gas, mist, smoke, vapor, or odor or any combination thereof in such concentration and duration as to be or

tend to be injurious or to adversely affect human health or welfare, animal life, vegetation, or property;”

7. INVESTIGATIONS

A. Prior Enforcement by the TCEQ

7.1. KMCO has been issued two administrative orders from the TCEQ relating to Air Quality violations in Harris County since May 2013.⁶ For those two violations, the TCEQ assessed penalties against KMCO totaling \$38,870.⁷

B. Complaints and Investigations

1. February 6, 2013

7.2. On February 5, 2013 at approximately 8:40 p.m., Pollution Control received a complaint of a sulfur odor from the KMCO Facility.

7.3. On February 6, 2013 at approximately 12:15 a.m., an investigator from the Harris County Pollution Control Services Department (HCPCSD) received a notification via text message from Guy Smith, Health, Safety and Security Manager for KMCO, L.P. that an odor event had occurred at the Facility.

7.4. On February 6, 2013 at approximately 8:20 a.m., HCPCSD received another complaint of a natural gas odor from the KMCO Facility the previous evening.

7.5. In response to multiple odor complaints that it had received, the Crosby Fire Department conducted an investigation and tracked the odor to the KMCO Facility. It was determined that a leaking gasket on a thief hatch at the top of a tank had allowed butyl mercaptan vapor and hydrogen sulfide to be released and was the source of the odor. The thief hatch was

⁶ List of Admin. Orders Issued Since Sept. 1, 1998, Tex. Comm’n on Env’tl Quality, 102, Sept. 14, 2016, <https://www.tceq.texas.gov/assets/public/compliance/enforcement/penenfacs/AdministrativeOrdersIssued.pdf>.

used almost daily by operators at the Facility, none of whom discovered the leak prior to the odor complaints.

7.6. KMCO did not inform HCPHES of the odor at the time of the investigation as required by the 2009 AFJ, nor did it inform HCPCSD of the odor.

2. February 22, 2013

7.7. On February 22, 2013, the HCPCSD investigator received a phone call from Guy Smith on his cell phone informing him that the Crosby Fire Department was at the Site investigating in response to multiple natural gas odor calls.

7.8. One of the calls came from a Wal-Mart store in Crosby. The store was evacuated by the fire department during the leak investigation because of a gas odor. The investigation revealed that there was no gas leak in the store. The investigator arrived at the Wal-Mart store at approximately 8:57 a.m. and conducted an odor survey, but observed no natural gas odor at that time.

7.9. The investigator then met with Guy Smith, Sean Hall of the Crosby Fire Department, and Ed Laszcz at the KMCO Facility to discuss the cause of the release. While at the KMCO Facility, the investigator received a notification that the Sacred Heart Catholic School, located downwind of KMCO at the time, had closed due to a strong natural gas odor. The investigator drove to the school in an attempt to observe the odor, but by the time he arrived the odor had been vented from the building.

7.10. Further investigation on April 1, 2013 revealed that the cause of the emissions was an operator who failed to completely close the shut-off valve on a nitrogen supply line to the scrubber unit. The open valve allowed nitrogen pressure to build in the vapor collection header,

which escaped through the thief hatch in a series of “puffs” when operators changed the scrubber solution.

7.11. On April 24, 2013 KMCO supplied air modeling for the event of February 22. The model demonstrated that the odor was of detectable concentration at the Sacred Heart Catholic School after the release.

7.12. On May 22, 2013, the investigator reviewed information requested from CenterPoint Energy about gas leak calls in the Crosby area from the evening of February 21, 2013 through February 22, 2013 that were determined not to be caused by gas leaks or odorizing stations. A map of the calls showed two clusters of calls. One cluster was in Baytown, southeast of KMCO, between approximately 4:00 p.m. and 6:00 p.m. on February 21, 2013. The second cluster was located southwest of the KMCO Facility, with the largest concentration of calls occurring between 6:00 a.m. and 9:00 a.m. on February 22, 2013. Both clusters were downwind of KMCO at the time the calls were made and are consistent with the times of the KMCO releases.

7.13. Based on the totality of the circumstances during the investigation, the air modeling, and the map of gas leak complaints from CenterPoint Energy, the investigator confirmed a nuisance violation.

7.14. KMCO did not call to inform of the odor at the time of the investigation as required by the 2009 AFJ, nor did it inform HCPCSD of the odor.

7.15. The release was a violation of 30 TAC 116.115(c), NSR Permit 9383 Special Condition 13, 30 TAC 101.4, 30 TAC 116.115(b)(2)(H)(i) and THSC 382.085(a), a total of 5 violations.

7.16. The release on February 22, 2013 was also a violation of Agreed Permanent Injunctions from 1990 and 2009.

7.17. On June 13, 2013, HCPCSD issued a Notice of Violation for the events of February 6 and February 22, 2013 based on the investigations.

3. September 16, 2016

7.18. On September 16, 2016, HCPCSD received a complaint of black residue in a creek located downstream from the KMCO Facility with a strong gas or waste odor that caused the complainant headache and nausea and prevented complainant from going outside and barbecuing. On September 17, 2016, a HCPCSD investigator visited the complainant's property and was escorted to a creek at the back of the property. The investigator detected a strong and intermittent sulfur odor. The investigator observed that the creek was deep black in color and flowing at approximately ten gallons per minute. The investigator did not see any aquatic wildlife. The odor made the investigator feel slightly light headed and became trapped in the investigator's vehicle, where it could still be detected the following day.

7.19. The investigator walked and then drove upstream and observed that the black color and intermittent sulfur odor were present along a ditch running from two metal outfall pipes, approximately 36 inches in diameter, on the southwest edge of the KMCO property to a creek running behind residences including the complainant's.

7.20. The investigator contacted Billy Nash, Operations Specialist for KMCO and together they walked between the outfalls and a 36-inch gate valve on KMCO property that controls the discharge of storm water. The investigator observed that the ditch at the gate valve had heavy accumulation of black residue on the bottom of the ditch and black and brown residue floating on top of the water. The water upstream of the gate valve was also black in color.

7.21. The investigator then spoke with KMCO's Environmental Health Safety & Security Manager Kelly Nidini, who walked with the investigator along the ditch to the area near the complainant's residence, then upstream. The investigator noted that the ditch on the northwest corner of the Facility and along the north fence line on Clara Road contained approximately one to two inches of clear standing water, with no black residue, black water, or odor.

7.22. By the end of the investigation on September 17, the investigator had an orange-sized knot at the base of her neck and felt lightheaded.

7.23. On September 19, 2016, two HCPCSD investigators returned to ditch behind the complainant's property to conduct a follow up investigation. They again detected a strong, intermittent sulfur odor. They walked upstream to the 36-inch outfalls and observed that the water in the creek became darker and the odor became stronger as they traveled upstream.

7.24. On September 20, 2016, HCPCSD received a complaint from another complainant alleging black water and egg-like or natural gas odor in the creek behind that complainant's house. In response to the complaint, two investigators conducted a follow up investigation at the KMCO Facility. At the Facility, the investigators observed multiple spills on the ground from product operations, including light black water flowing into a grate near the flare on site that led toward the 36-inch outfalls.

7.25. The investigators proceeded to the complainant's property, which was also adjacent to the creek downstream from the 36-inch outfalls. The investigators saw dark black water in the creek that smelled moderately strongly of sulfur. A thin brown residue floated on top of the water.

7.26. On September 21, a HCPCSD investigator conducted a follow up inspection. The investigator did not see active discharge from the 36-inch outfalls, but the black water and brown floating residue remained. The investigator continued to see black water and smell an intermittent strong sulfur odor along the length of the ditch.

7.27. Also on September 21, HCPCSD received a third complaint alleging that on September 17, black water with a foul odor in Jackson Bayou had caused the complainant nausea and a headache and had gave the complainant's daughter a burning nose, a cough, and a headache.

7.28. On September 22, two HCPCSD investigators returned for another follow up investigation. They observed light black water still visible downstream from the Facility in Jackson Bayou. They also saw intermittent sections with light black standing water further upstream. They observed vacuum trucks attempting to suction water near the residences of two complainants.

7.29. HCPCSD conducted additional follow up investigations on September 26 and 30. By September 30 the water was clear with a light brown tint and the investigators detected no odor.

7.30. HCPCSD issued a notice of violation to KMCO based on the investigations into the September 17 release.

7.31. The events of September 17, 2016 constitute violations of Texas Water Code § 26.121, 30 Tex. Admin. Code § 101.4, Tex. Health & Safety Code § 382.085(a), and the Harris County Storm Water Regulations, a total of 4 violations.

7.32. The events of September 17, 2016 also constitute violations of the 1990 and 2009 AFJs.

4. January 6, 2017

7.33. On January 9, 2017, HCPCSD received a complaint alleging an odor nuisance over the previous weekend, beginning on Friday, January 6. A HCPCSD investigator visited the complainant's property to investigate the complaint and smelled a fleeting, faint, dead animal-like odor in the front yard, but nothing that would constitute a nuisance. The investigator conducted an odor survey and detected a strong sour odor northwest, or downwind, of the KMCO Facility.

7.34. Later in the afternoon on January 9, HCPCSD received four more complaints concerning a rotten fish odor beginning the previous Friday night. The investigator visited the properties of two complainants, both located to the south of KMCO, but smelled only a faint dead animal smell similar to the one smelled earlier that day.

7.35. The investigator determined that the wind had come out of the north over the weekend, during the time the complainants alleged the nuisance had been present, but during the investigation it was coming from the southeast. The complainants' residences were to the south of the Facility, downwind of KMCO during the weekend but not on the day of the investigation. The investigator brought one of the complainants to the area northwest of the KMCO Facility where the investigator had detected the odor during the odor survey and the complainant confirmed that the odor there was the same as the one they had smelled over the weekend, when the complainant's property was downwind of the Facility. Therefore, the investigator confirmed a nuisance violation.

7.36. The investigator visited the KMCO Facility after each investigation on January 6 and informed several KMCO representatives, including Plant Manager David Spacek and Environmental Air Compliance Engineer P. Vista Stewart, of the results of each investigation.

The KMCO representatives explained that there had been a release on Friday, December 6 of Hexamethylenetetramine, which has a low odor threshold and can smell like ammonia or rotting fish.

7.37. On January 13, KMCO sent to HCPCSD an Emissions Event Report stating that operator error caused a reactor to overheat, which caused a safety release valve to discharge hexamethylenetetramine and formaldehyde.

7.38. KMCO did not report the emissions event to HCPCSD within 24 hours, which constitutes a violation of 30 Tex. Admin. Code 101.201(a)(1)(B).

7.39. In total, the events of January 6, 2017 constitute violations of 30 Tex. Admin. Code §§ 101.4, 101.201(a)(1)(B), 116.115(c), and 116.115(b)(2)(H)(i), Tex. Health & Safety Code §§ 382.085(a) & (b), and Permit 9383 Special Condition 13, a total of 7 violations.

7.40. The events of January 6, 2017 also constitute violations of the 1990 and 2009 AFJs.

8. FIRST CLAIM: DEFENDANT'S VIOLATIONS OF THE TEXAS CLEAN AIR ACT

The following violations occurred in Harris County, Texas:

Violation of Permit Special Conditions

8.1. Defendant violated § 116.115(c) of Title 30 of the Texas Administrative Code, and Permit 9383 Special Condition 13 by failing to comply with all special conditions contained in the permit. Specifically, Defendant failed to route all waste gas streams containing chemicals designated for control by scrubber to the scrubber on at least February 22, 2013 and January 9, 2017. This constitutes at least two days of violation. Each day of a continuing violation is a separate violation. Defendant is liable for a penalty within the statutory range for each day of violation.

Failure to Comply with Rules and Conditions Precedent for Permit

8.2. Defendant violated § 116.115(b)(2)(H)(i) of Title 30 of the Texas Administrative Code by failing to comply with the rules, regulations, and orders of the TCEQ and conditions precedent to the granting of NSR Permits No. 9383 on at least February 22, 2013 and January 6, 2017. This constitutes at least two days of violation. Each day of a continuing violation is a separate violation. Defendant is liable for a penalty within the statutory range for each day of violation.

Creating a Nuisance by Discharging Odor

8.3. Defendant violated § 101.4 of Title 30 of the Texas Administrative Code by discharging air contaminants in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health, welfare, or property, or as to interfere with the normal use and enjoyment of property on at least February 22, 2013, September 17, 2016, and January 9, 2017. This constitutes at least 3 days of violation. Each day of a continuing violation is a separate violation. Defendant is liable for a penalty within the statutory range for each day of violation.

Emitting an Air Contaminants that Cause Air Pollution

8.4. Defendant violated Texas Health & Safety Code § 382.085(a) by causing the emission of an air contaminant that causes or contributes to air pollution on at least February 22, 2013, September 17, 2016 and January 9, 2017. This constitutes at least three days of violation. Defendant is liable for a penalty within the statutory range for each day of violation.

Emission of Air Contaminants in Violation of TCEQ Rules

8.5. Defendant violated Texas Health & Safety Code § 382.085(b) by causing the emission of air contaminants in violation of TCEQ rules on at least February 22, 2013, and

January 9, 2017. This constitutes at least two days of violation. Defendant is liable for a penalty within the statutory range for each day of violation.

8.6. Defendant's violations of the Texas Clean Air Act and the rules promulgated thereunder, enumerated in paragraphs 8.1 – 8.5 of this section, constitute a total of 12 days of violation.

9. SECOND CLAIM: DEFENDANT'S VIOLATIONS OF THE TEXAS WATER CODE

9.1. Defendant violated Texas Water Code § 26.121(a) by discharging industrial waste into or adjacent to water in the state on at least September 17, 2016. This constitutes at least one day of violation. Each day of a continuing violation is a separate violation. Defendant is liable for a penalty within the statutory range for each day of violation.

10. THIRD CLAIM: DEFENDANT'S VIOLATIONS OF THE STORM WATER REGULATIONS

10.1. Defendant violated the Harris County Storm Water Quality Regulations by causing discharges into the MS4 that were not composed entirely of storm water on at least September 17, 2016. This constitutes at least one day of violation. Defendant is liable for a penalty within the statutory range for each day of violation.

11. CIVIL PENALTIES

11.1. As detailed in Sections 8, 9, and 10 of this Petition, Defendant committed 14 violations, including 13 violations falling under the penalty provisions of Tex. Water Code § 7.102 and one violation falling under the penalty provisions in the Storm Water Regulations.

11.2. Harris County requests that Defendant be assessed a civil penalty between \$50 and \$25,000 for each day of each violation under the Texas Clean Air Act and the Texas Water Code, treating each day of a continuing violation as a separate violation. Tex. Water Code § 7.102.

11.3. Harris County requests that Defendant be assessed a civil penalty of up to \$1,000 for each day of each violation of the Storm Water Regulations.

12. INJUNCTIVE RELIEF

12.1. As shown above, Defendant KMCO, L.L.C. violated provisions of the Texas Water Code, the Texas Clean Air Act, Commission rules, the Storm Water Regulations, and the 1990 and 2009 AFJs.

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

- a) "Defendant" shall mean KMCO L.L.C.
- b) "Facility" shall mean KMCO L.L.C.'s facility located at 16503 Ramsey Road, Crosby, Harris County, Texas.
- c) "Immediately" shall mean by 5:00 p.m. Central Standard Time on the next Day after the Effective Date.
- d) "Plaintiff" or "Harris County" shall mean Harris County, Texas, a political subdivision of the state of Texas.

Temporary Injunction

12.3. Harris County seeks a temporary injunction ordering Defendant to comply with the Texas Clean Water Act, the Texas Clean Air Act, Commission Rules, the Storm Water Regulations, and all prior judgments at the Facility. Specifically, Harris County requests an injunction against Defendant, ordering Defendant, its agents, officers, directors, servants, and employees, and all other persons who receive actual notice of this injunction to be enjoined as follows:

12.4. Immediately, Defendant shall stop emitting air contaminants from the Facility in such quantity and duration that interfere with the normal use and enjoyment of neighboring properties;

12.5. Immediately, Defendant shall stop all unauthorized discharges into the MS4 from the Facility;

12.6. Immediately, Defendant shall comply with all NSR Permit special conditions and conditions precedent at the Facility;

12.7. Harris County requests that this Court order Defendant to engage an independent third party to conduct an environmental audit of Defendant's Facility and report to the Court any deficiencies found, as well as what actions must be taken in order to bring the Facility into compliance;

12.8. Upon completion of the environmental audit, Harris County requests that this Court order Defendant to implement the independent auditor's recommendations;

12.9. Harris County requests any additional or alternative injunctive relief deemed appropriate by this Court.

Permanent Injunction

12.10. Upon final trial, Harris County requests that this Court make the temporary injunctive relief set forth above permanent.

13. ATTORNEY'S FEES AND COSTS

13.1. Harris County requests that, upon final hearing, this Court award Harris County reasonable attorney's fees and costs, to be recovered from Defendant. Tex. Water Code § 7.108 and Tex. Gov't Code § 402.006(c).

PRAYER

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

- a) That the State of Texas be made a necessary and indispensable party to the suit as required by law;
- b) That this Court issue a show cause order requiring Defendant to appear before the Court to show why it should not be enjoined from further violation of the laws of the State of Texas, as set out above;
- c) That, upon trial, this Court grant a permanent injunction against Defendant, in favor of Plaintiff, for the injunctive relief as laid out above;
- d) That, upon trial, this Court grant civil penalties against Defendant, within the range allowed by law, as requested above;
- e) That, upon trial, this Court grant Harris County its reasonable attorney's fees and that all costs be assessed against Defendant, plus interest at the legal rate from the date of judgment until fully paid; and
- f) This Court grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

VINCE RYAN
Harris County Attorney

Rebekah Wendt

Rebekah Wendt
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**ATTORNEYS FOR PLAINTIFF
HARRIS COUNTY, TEXAS**

Unofficial Copy Office of Marilyn B. Jones District Clerk

AFFIDAVIT


STATE OF TEXAS §
 §
COUNTY OF HARRIS §

Before me, the undersigned notary, on this day personally appeared Kathy Stone, a person whose identity is known to me. After I administered an oath to her, upon her oath she said:

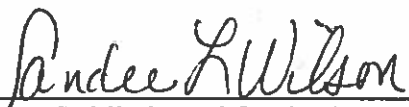
“My name is Kathy Stone, I am over the age of twenty-one years and of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein:

I am employed by the Harris County Pollution Control Services Department as the Air Compliance Coordinator.

I have read the foregoing *Harris County’s Original Petition and Application for Temporary and Permanent Injunction in Harris County v. KMCO LLC* and am familiar with the facts alleged. The facts alleged in Section 7, Paragraphs 7.1. – 7.40. of the petition are within my personal knowledge and are true and correct.


Kathy Stone

SUBSCRIBED AND SWORN TO before me on August 18, 2017, to certify which witness may hand and official seal.


Notary Public in and for the State of Texas

