

No. D-1-GN-19-004495

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
	§	
EXXON MOBIL CORPORATION,	§	
	§	
<i>Defendant.</i>	§	419TH JUDICIAL DISTRICT

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

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

I. DISCOVERY

1.1 Plaintiff will conduct discovery under a Level 2 Discovery Control Plan pursuant to Tex. R. Civ. P. 190.3.

1.2 This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because (1) the State seeks non-monetary injunctive relief and (2) the State’s claim for civil penalties exceeds \$100,000.

II. PARTIES

2.1 Plaintiff, the State of Texas (“State”), is authorized to bring this suit through its Attorney General at the request of the Texas Commission on Environmental Quality (“TCEQ”), pursuant to Tex. Water Code §§ 7.032, 7.105. No filing fee or other security for costs is required of the State under Tex. Civ. Prac. & Rem. Code § 6.001.

2.2 Defendant Exxon Mobil Corporation (“ExxonMobil”) is a foreign corporation organized under the laws of New Jersey and authorized to do business in Texas and may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218, or wherever it may be found.

2.3 ExxonMobil is a “person” within the meaning of Section 382.003(10) of the Texas Health and Safety Code, Section 26.001(25) of the Texas Water Code, and Section 311.005(2) of the Texas Government Code.

III. JURISDICTION AND VENUE

3.1 This Court has jurisdiction over this case and the venue is proper in Travis County because this is an action to enforce Chapter 382 of the Texas Health and Safety Code, Chapter 26 of the Texas Water Code, and TCEQ rules promulgated thereunder, and the Texas Water Code. Tex. Water Code §§ 7.032, 7.105; Tex. Gov’t Code § 2001.202.

IV. NATURE OF SUIT AND AUTHORITY

4.1 This is a civil suit to enforce the Texas Clean Air Act, codified in Chapter 382 of the Texas Health and Safety Code; Chapter 26 of the Texas Water Code; and rules adopted by TCEQ pursuant to these statutes. This matter involves an ethylene manufacturing plant owned and operated by ExxonMobil in the Baytown, Texas area that caught fire and emitted multiple air contaminants without TCEQ authorization. This matter also involves unauthorized discharges of firefighting wastewater. The State seeks injunctive relief, civil penalties, attorney’s fees, and court costs.

Texas Clean Air Act

4.2 It is the policy of the State to “safeguard the state’s air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility.” Tex. Health & Safety Code § 382.002(a).

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

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

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

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

4.7 “Air pollution” means “the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that (A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life,

vegetation, or property; or (B) interfere with the normal use or enjoyment of animal life, vegetation, or property.” Tex. Health & Safety Code § 382.003(3).

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

4.9 “Title V Operating Permit” refers to permits issued pursuant to TCEQ’s Federal Operating Permits Program, as codified by 30 Tex. Admin Code Ch. 122.

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

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

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

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

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

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

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

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

4.19 The Texas Clean Air Act confers jurisdiction on TCEQ to adopt rules regulating the outdoor burning of waste. Tex. Health & Safety Code § 382.018. Pursuant to its authority under the Texas Clean Air Act, TCEQ adopted 30 Tex. Admin Code. Ch. 111 to prohibit unauthorized outdoor burning. Under 30 Tex. Admin. Code § 111.201, a person may not cause, suffer, allow, or permit any unauthorized outdoor burning within the State of Texas.

Texas Water Code

4.20 It is the policy of the State to maintain the quality of water in the state consistent with the public health and enjoyment. Tex. Water Code § 26.003. Chapter 26 of the Texas Water Code confers jurisdiction on TCEQ to administer the provisions of chapter 26 and establish the level of quality to be maintained in, and control the quality of the water in the state. Tex. Water Code § 26.011.

4.24 Except as authorized by TCEQ, no person may (1) discharge municipal, recreational, agricultural, or industrial waste into or adjacent to any water in the State; (2) discharge other waste into or adjacent to any water in the state which may cause pollution of the water; or (3) “commit any other act or engage in any other activity 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 . . .” Tex. Water Code § 26.121(a).

4.25 To 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.” Tex. Water Code § 26.001(20).

4.26 “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.” Tex. Water Code § 26.001(5).

Enforcement Authority

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

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

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

V. BACKGROUND

5.1 ExxonMobil owns and operates a chemical and refining complex located at 3525 Decker Road, Baytown, Harris County, Texas ("Complex"). The Complex includes a refinery ("Refinery") and a plant that processes a class of petrochemicals known as olefins to produce industrial chemicals, such as ethylene ("Plant"). ExxonMobil operates the Plant under several permits issued by TCEQ in accordance with federal and state Clean Air Acts and the Texas Water Code, including Title V Operating Permit No. O-1553; New Source Review Permit Nos. 3452 and 102982; Texas Pollutant Discharge Elimination System ("TPDES") Permit Nos. WQ0002184000 and WQ0000592000; and several Permit-by-Rule registrations (collectively, the "Permits").

5.2 On July 31, 2019, an explosion occurred at the Plant igniting a fire. According to initial reports, the explosion and fire occurred in the Propylene Recovery Unit due to a loss of containment and ignition of a propane and polypropylene mixture.

5.3 The fire produced a thick, black cloud of smoke that was visible for miles. As a result of the fire, the City of Baytown issued an order to shelter-in-place for residents who live west of the Plant and south of Spur 330.

5.4 For the duration of the fire at the Plant, firefighting wastewater was continuously applied to extinguish the fire. The resulting firefighting wastewater was collected in a retention pond at the Plant and then pumped to a wastewater treatment plant in the Refinery.

5.5 On July 31, 2019, TCEQ documented that the pumps used to pump firefighting wastewater from the retention pond at the Plant to the wastewater treatment plant in the Refinery became overwhelmed and were unable to keep up with the amount of firefighting wastewater entering the retention pond. Accordingly, TCEQ documented that at approximately 4:49 PM, the firefighting wastewater began being diverted into a canal in the Plant, which then flowed into the Plant's Outfall 002 and was discharged into an unnamed drainage ditch that flows into West Fork Goose Creek, then Goose Creek, and eventually Tabbs Bay in the Houston Ship Channel. TCEQ documented that this discharge of firefighting wastewater from Outfall 002 continued until approximately 2:23 AM on August 1, 2019. ExxonMobil estimates the release to have been approximately 10.4 million gallons.

5.6 During the afternoon of August 1, 2019, a rain event occurred, causing stormwater to flow into the retention pond and mix with the firefighting wastewater already in the retention pond. The pumps that had been pumping the water from the retention pond to the wastewater treatment plant in the Refinery became overwhelmed again. Accordingly, at approximately 5:29

PM on August 1, 2019, the water in the retention pond, which by this time contained a mixture of stormwater and firefighting wastewater, was diverted to the canal in the Plant that flowed into the Plant's Outfall 002 and was discharged into an unnamed drainage ditch that flows into West Fork Goose Creek, then Goose Creek, and eventually Tabbs Bay in the Houston Ship Channel. According to ExxonMobil, this unauthorized discharge continued until approximately 11:25 PM on August 1, 2019. ExxonMobil estimates the release to have been approximately 7.4 million gallons.

5.7 During the evening of August 2, 2019, another rain event occurred, causing more stormwater to flow into the retention pond and mix with firefighting wastewater already in the retention pond. The pumps that had been pumping the water in the retention pond to the wastewater treatment plant in the Refinery became overwhelmed again. Accordingly, at approximately 6:31 PM on August 2, 2019, the water in the retention pond contained a mixture of stormwater and firefighting wastewater and was diverted to the canal in the Plant that flowed into the Plant's Outfall 002. According to ExxonMobil, this unauthorized discharge continued until approximately 11:31 PM on August 2, 2019. ExxonMobil estimates the release to have been approximately 2.1 million gallons.

5.8 The Plant operates under TPDES Permit No. WQ0002184000, which does not authorize discharges of firefighting wastewater.

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

Unauthorized Air Pollution at the Plant

6.1 Under Tex. Health & Safety Code § 382.085(a), except as authorized by TCEQ, no person may cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.

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

6.2 On July 31, 2019, a fire ignited at the Plant. According to initial reports, at least 37 people sustained injuries and at least 66 people were medically evaluated. The burning at the Plant emitted several air contaminants. This emissions event and the associated air contaminants are not authorized by ExxonMobil's Permits or any TCEQ rule or order.

6.3 Therefore, ExxonMobil caused, suffered, allowed, or permitted the emission of air contaminants from the Plant in violation of Tex. Health & Safety Code § 382.085(a) and (b), and Tex. Water Code § 7.101 each day from July 31, 2019, until all emissions related to the fire have ceased. Each air contaminant emitted, each separate emission point, and each day on which such emissions occurred constitute separate violations.

6.4 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against ExxonMobil within the statutory range of not less than \$50 nor greater than \$25,000 for each day of each violation alleged in Paragraph 6.3 of this Petition.

Unauthorized Outdoor Burning at the Plant

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

6.6 On July 31, 2019, a fire ignited at the Plant. This burning was not authorized by the Texas Clean Air Act, ExxonMobil's Permits, or any TCEQ rule or order.

6.7 Therefore, ExxonMobil caused, suffered, allowed, or permitted outdoor burning at the Plant in violation of 30 Tex. Admin. Code § 111.201 and Tex. Water Code § 7.101 each day from July 31, 2019, until the burning ceased.

6.8 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against ExxonMobil within the statutory range of not less than \$50 nor greater than \$25,000 for each day of the violation alleged in Paragraph 6.7 of this Petition.

Nuisance

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

6.10 Inhalation of smoke resulting from the burning of propane and propylene can cause nose and breathing irritation. As a result of the fire, the City of Baytown issued an order to shelter-in-place for residents who live west of the Plant and south of Spur 330.

6.11 Therefore, ExxonMobil caused, suffered, allowed, or permitted a nuisance at the Site in violation of 30 Tex. Admin. Code § 101.4 and Tex. Water Code § 7.101, on at least July 31, 2019.

6.12 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against ExxonMobil within the statutory range of not less than \$50 nor greater than \$25,000 for each day of violation alleged in Paragraph 6.11 of this Petition.

Unauthorized Visible Emissions

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

6.14 The fire at the Site ignited on July 31, 2019, and created a large, dark emissions plume. The plume was visible miles away from the Site. The visible emissions from the fire are not authorized by the Texas Clean Air Act, ExxonMobil's Permits, or any TCEQ rule or order.

6.15 Therefore, ExxonMobil caused, suffered, allowed, or permitted unauthorized visible emissions at the Site in violation of 30 Tex. Admin. Code § 111.111 and Tex. Water Code § 7.101, each day from July 31, 2019, until all visible emissions related to the fire ceased.

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

Unauthorized Discharge of Wastewater

6.17 Under section 26.121(a) of the Texas Water Code, except as authorized by TCEQ no person may: (1) discharge municipal, recreational, agricultural, or industrial waste into or adjacent to any water in the State; (2) discharge other waste into or adjacent to any water in the state which may cause pollution of the water; or (3) commit any other act or engage in any other activity 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. To 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. Tex. Water Code § 26.001(20). No person may

cause, suffer, allow, or permit any activity in violation of the Texas Water Code or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

6.18 On July 31, 2019, the pumps used to move firefighting wastewater from the retention pond to the wastewater treatment plant in the Refinery became overwhelmed and were unable to keep up with the amount of firefighting wastewater entering the retention pond. As a result, on July 31, August 1, and August 2 2019, the untreated firefighting wastewater was diverted into a canal in the Plant, which then flowed into the Plant's Outfall 002 and was discharged into an unnamed drainage ditch that flows into West Fork Goose Creek, then Goose Creek, and eventually Tabbs Bay in the Houston Ship Channel.

6.19 On August 1, 2019, a rain event occurred, causing stormwater to flow into the retention pond and mix with the firefighting wastewater already in the retention pond. The pumps that had been pumping the water from the retention pond to the wastewater treatment plant in the Refinery became overwhelmed again. The water in the retention pond, which contained a mixture of stormwater and firefighting wastewater, was diverted to a canal in the Plant that flowed into the Plant's Outfall 002 and discharged into the unnamed drainage ditch that flows into West Fork Goose Creek, then Goose Creek, and eventually Tabbs Bay in the Houston Ship Channel.

6.20 On August 2, 2019, another rain event occurred, causing stormwater to flow into the retention pond and mix with the firefighting wastewater already in the retention pond. The pumps that had been pumping the water in the retention pond to the wastewater treatment plant in the Refinery became overwhelmed yet again. The water in the retention pond contained a mixture of stormwater and firefighting wastewater and was diverted to a canal in the Plant that flowed into the Plant's Outfall 002. It then discharged into the unnamed drainage ditch that flows into West Fork Goose Creek, then Goose Creek, and eventually Tabbs Bay in the Houston Ship Channel.

6.21 The Plant operates under TPDES Permit No. WQ0002184000, which allows it to discharge wastewater under certain conditions. TPDES Permit No. WQ0002184000 does not, however, authorize any discharges of firefighting wastewater, including firefighting wastewater mixed with stormwater.

6.21 The firefighting wastewater discharges from the Plant's Outfall 002 are not authorized by the Texas Water Code, ExxonMobil's Permits, or any TCEQ rule or order. The unnamed drainage ditch, West Fork Goose Creek, Goose Creek, and Tabbs Bay are waters of the state under Section 26.001(5) of the Texas Water Code.

6.22 Therefore, ExxonMobil has caused, suffered, allowed, or permitted the discharge of wastewater in the waters of the state in violation of Texas Water Code Sections 26.121 and 7.101, from July 31, 2019 to August 2, 2019.

6.23 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against ExxonMobil within the statutory range of not less than \$50 nor greater than \$25,000 for each day of the violation alleged in Paragraph 6.24 of this Petition.

VII. CLAIM 2 - INJUNCTIVE RELIEF

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

7.2 As alleged above, ExxonMobil has violated, and continues to violate, the Texas Water Code, the Texas Clean Air Act, ExxonMobil's Permits, and regulations promulgated by TCEQ as alleged in Section VI above. ExxonMobil is obligated to comply with the law and may be enjoined by either a mandatory or prohibitory injunction.

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

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

VIII. ATTORNEY'S FEES AND COSTS

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

IX. POST-JUDGMENT INTEREST

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

PRAYER

The State of Texas requests the following:

- 1.** That citation be issued for Defendant Exxon Mobil Corporation to appear and answer;
- 2.** That upon trial, the Court grant a permanent injunction against Defendant Exxon Mobil Corporation, as requested above;
- 3.** That the Court grant judgment against Defendant Exxon Mobil Corporation for appropriate civil penalties within the range allowed by law;
- 4.** That the Court award the State its reasonable attorney's fees, court costs, and reasonable investigative costs in this action;

5. That the Court award the State post-judgment interest on all amounts awarded in this suit until fully paid;
6. That the Court award the State all such other relief, general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

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