

No. **D-1-GN-20-000516**

STATE OF TEXAS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
VALERO ENERGY PARTNERS LP,	§	
	§	
Defendant.	§	459TH JUDICIAL DISTRICT

STATE OF TEXAS’S ORIGINAL PETITION

The State of Texas, by and through its Attorney General, on behalf of the Texas Commission on Environmental Quality (“TCEQ”), files this Original Petition, seeking civil penalties and attorney’s fees against Defendant Valero Energy Partners LP (“Valero”), for violations of the Texas Clean Air Act and TCEQ regulations and permits issued thereunder.

I. DISCOVERY

1.1 The State 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 the State’s claim for civil penalties could exceed \$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 TCEQ pursuant to Tex. Water Code § 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, Valero, is a Connecticut corporation with its principal office in Texas located at One Valero Way, San Antonio, Texas 78249. Valero is, and was at all times relevant to

this suit, the owner and operator of a crude tank farm located in Harris County, Texas. Valero may be served through its registered agent, C T Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136, or wherever it may be found.

III. JURISDICTION AND VENUE

3.1 This Court has jurisdiction over this case and the venue is proper in Travis County because this is an action to enforce Chapter 382 of the Texas Health and Safety Code, TCEQ rules promulgated thereunder, and the Texas Water Code. Tex. Water Code § 7.105.

IV. NATURE OF SUIT AND AUTHORITY

4.1 This is a civil suit to enforce the Texas Clean Air Act (“TCAA”), codified in Chapter 382 of the Texas Health and Safety Code (“THSC”), and rules adopted by the TCEQ pursuant to the TCAA. This matter involves a petroleum refinery that emitted multiple air contaminants during an emissions event without authorization. The State seeks civil penalties for Valero’s violations of state statutes and regulations. The State also seeks its reasonable attorney’s fees and costs for prosecuting this action.

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 the maintenance of adequate visibility.” Tex. Health & Safety Code § 382.002(a).

4.3 The TCAA provides that unless authorized by the 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.” *Id.* at § 382.085(a).

4.4 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 TCAA or of any TCEQ rule or order. *Id.* at § 382.085(b).

4.5 Under the TCAA, “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.” *Id.* at § 382.003(2).

4.6 “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.” *Id.* at § 382.003(3).

4.7 The TCAA confers jurisdiction on the TCEQ to adopt rules regulating the management of atmospheric emissions of air contaminants. *Id.* at § 382.017. The TCAA also confers jurisdiction on the 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; and 30 Tex. Admin. Code § 116.115.

4.8 The 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: 250 tons per year (“tpy”) of carbon monoxide (“CO”) or nitrogen oxides (“NO_x”); 25 tpy of volatile organic compounds (“VOC”), sulfur dioxide (“SO₂”), or inhalable

particulate matter (“PM”); or 25 tpy of any other air contaminant. 30 Tex. Admin. Code § 106.4(a)(1)(A)-(B), and (E).

4.9 Total new or increased emissions, including fugitives, from a permitted by rule facility may not exceed six pounds per hour or ten tons per year for the following contaminants: acetylene, argon, butane, crude oil, refinery petroleum fractions (except for pyrolysis naphthas and pyrolysis gasoline) containing less than ten volume percent benzene, carbon monoxide, cyclohexane, cyclohexene, cyclopentane, ethyl acetate, ethanol, ethyl ether, ethylene, fluorocarbons Numbers 11, 12, 13, 14, 21, 22, 23, 113, 114, 115, and 116, helium, isohexane, isopropyl alcohol, methyl acetylene, methyl chloroform, methyl cyclohexane, neon, nonane, oxides of nitrogen, propane, propyl alcohol, propylene, propyl ether, sulfur dioxide, alumina, calcium carbonate, calcium silicate, cellulose fiber, cement dust, emery dust, glycerin mist, gypsum, iron oxide dust, kaolin, limestone, magnesite, marble, pentaerythritol, plaster of paris, silicon, silicon carbide, starch, sucrose, zinc stearate, or zinc oxide. *Id.* at § 106.261(a)(2).

4.10 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. *Id.* at § 106.6(b).

4.11 “Emissions event” is any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more emissions points at a regulated entity. *Id.* at § 101.1(28).

4.12 The Texas Clean Air Act authorizes the TCEQ to develop criteria for determining when an emissions event is reportable and when an emissions event is considered excessive. Tex. Health & Safety Code §§ 382.0215 and 382.0216.

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

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

4.15 An owner or operator of a regulated facility that experienced an emissions event must create a final record of all reportable emissions events within two weeks after the end of the emissions event. *Id.* at § 101.201(b). The final record must include, among other things, the compound descriptive type of all individually listed compounds or mixtures of air contaminants listed in 30 Tex. Admin. Code § 101.1(89), from all emission points involved in the emissions event, that are known through common process knowledge or past engineering analysis or testing to have been released during the emissions event. *Id.* at § 101.201(b)(1)(G).

4.16 At the TCEQ’s request, an owner or operator of a facility experiencing an emissions event must provide additional or more detailed information regarding the event and must do so within the timeframe established by the request. *Id.* at § 101.201(f).

4.17 No person may cause, suffer, allow, or permit any activity in violation of the TCAA or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

4.18 A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit under the TCEQ jurisdiction shall be assessed 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 continuing violation is a separate violation. *Id.*

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

V. BACKGROUND

5.1 Valero is the owner and operator of a petroleum refinery located at 9701 Manchester Street, Houston, Harris County, Texas (the “Refinery”). The Refinery is the location of a crude tank farm (“Crude Tank Farm”) which contains an atmospheric, floating-roof storage tank identified as Tank T-003 (“Tank 3”). Tank 3 is used to store crude oil delivered to the Refinery by pipeline or barge, which is then pumped into the Refinery for processing. Valero has authorization to operate Tank 3 under Permit-by-Rule (“PBR”) registration No.106017.

5.2 Since August 2, 1996, through the incident that is subject to this lawsuit, several third-party inspections of Tank 3 noted the tank to be in poor operating condition. Moreover, pursuant to American Petroleum Institute 653 standards, external floating roof tanks should have internal inspections of the tanks conducted at least once every twenty years. The last internal inspection of Tank 3 occurred on August 2, 1996, thus the next internal inspection for Tank 3 should have been conducted on or before August 2, 2016. No internal inspection was conducted prior to that date.

Release Occurrence

5.3 Beginning on August 26, 2017, Harris County began to experience heavy rainfall as a result of Hurricane Harvey. According to Valero, as the Refinery was experiencing heavy

rainfall, crude oil from Tank 3 was fed to another tank identified as T-907. Then, at approximately 5:50 a.m., Valero began a transfer of crude oil into Tank 3 from a pipeline.

5.4 Valero reports that, in the early morning hours of August 27, 2017, its employees noticed a mixture of crude oil and water in the secondary containment area of the Crude Tank Farm. At the time of discovery, Valero alleges it believed the oil/water mixture was a small, localized release resulting from a flooded transfer pump basin. Despite its awareness of the release, Valero continued loading Tank 3 with crude oil from the pipeline.

5.5 According to Valero, in actuality, as heavy rainfall began to accumulate on the external floating roof of Tank 3, the water weight exceeded the buoyancy of the western side of the roof deck of Tank 3. As a result, the roof seal became deformed and caused a breach, thus partially submerging the roof of Tank 3. Water then entered Tank 3 as crude oil flowed over the submerged roof section and onto the surface of the roof deck. This resulted in the crude oil and water mixture flowing through Tank 3's drainage system and into the secondary containment area of the Crude Tank Farm. Valero estimates that Tank 3's roof submergence occurred around 12:15 a.m. on August 27, 2017.

5.6 As daylight broke on August 27, 2017, Valero reports noticing that the release of crude oil within the secondary containment area was much larger than initially thought. Valero observed that the roof access ladder to Tank 3 was at an abnormal angle, and subsequently determined that the floating roof of Tank 3 had been partially submerged. It was only then that Valero finally ceased the loading operation of Tank 3 from the pipeline.

5.7 Due to water accumulation around Tank 3's drain valve, Valero reports that a boat was required to access and close the drain valve. According to Valero, the closing of Tank 3's drain valve occurred at approximately 9:24 a.m. on August 27, 2017, at which time the release of

oily water into the secondary containment area ceased.

5.8 Valero reports approximately 315 barrels of crude oil were released from Tank 3 into the secondary containment area.

Emissions Event

5.9 Valero reports 240,050 pounds of VOCs were emitted from Tank 3 during the emissions event. The emissions event lasted from August 27, 2017, when the breach of Tank 3's roof occurred, until September 14, 2017, for a duration of 440 hours and 30 minutes—a period of 19 days. Valero reported that the following compounds were released:

	Contaminant	Amount (lbs)		Contaminant	Amount (lbs)
1	2- methylhexane	6,401.46	64	3,3-&3,5-dimethylheptane	52.90
2	2- methylpentane	11,363.76	65	1c,2t,4t-trimethylcyclohexane	27.29
3	3- methylhexane	6,395.00	66	1c,2t,4t-trimethylcyclohexane	285.92
4	3- methylpentane	6,590.64	67	1,3-dimethylbenzene	2,103.18
5	benzene	1,883.68	68	2,3-dimethylheptane	1,902.34
6	butane, n	9,016.74	69	4-methyloctane	640.96
7	cyclohexane	5,491.26	70	2-methyloctane	1,480.72
8	ethane	55.32	71	1,1,2-trimethylcyclohexane	87.47
9	heptane, -n	13,333.23	72	3-methyloctane	1,246.33
10	hexane	16,783.72	73	3-ethylheptane	132.17
11	isobutane	2,828.00	74	1c,2t,4c-trimethylcyclohexane	93.79
12	isopentane	18,027.00	75	1,2-dimethylbenzene	601.28
13	methylcyclohexane	12,413.90	76	i-propylcyclohexane	471.65
14	methylcyclopentane	5,270.57	77	2,4-dimethyloctane	12.17
15	pentane	20,040.70	78	butylcyclopentane	472.37
16	propane	1,509.37	79	2,5-dimethyloctane	125.19
17	toluene	6,307.34	80	3,6-dimethyloctane	113.12
18	i-butane	2829.09	81	3-methyl-5-ethylheptane	259.97
19	2,2-dimethylpropane	561.08	82	1,3-methylethylbenzene	267.57
20	i-pentane	18,033.47	83	1,4-methylethylbenzene	141.82
21	2,2- dimethylbutane	932.49	84	1,3,5-trimethylbenzene	225.40
22	cyclopentane	31.61	85	5-methylnonane	256.91
23	2,3-dimethylbutane	1,944.01	86	4-methylnonane	414.41
24	2,2-dimethylpentane	457.72	87	1,2-methylethylbenzene	550.81
25	2,4-dimethylpentane	1,308.95	88	2-methylnonane	95.98
26	2,2,3-trimethylbutane	102.54	89	3-methylnonane	387.79
27	3,3-dimethylpentane	393.03	90	1,2,4-trimethylbenzene	593.97
28	2,3-dimethylpentane	2,380.10	91	decane	1,166.67
29	1,1-dimethylcyclopentane	642.71	92	jet fuel	3,023.85
30	1c,3-dimethylcyclopentane	1,255.86	93	diesel	7,654.81

31	1t,3-dimethylcyclopentane	1,640.47	94	resid	46.85
32	1t,2-dimethylcyclopentane	2,264.19	95	nonane	3,147.73
33	1,1,3-trimethylcyclopentane	1,218.91	96	1,1-methylethylcyclohexane	225.11
34	ethylcyclopentane	1,216.37	97	unknown {unknown c6} (properties as assumed same as hexane)	620.87
35	1c,2t,4-trimethylcyclopentane	889.00	98	unknown {unknown c7}(properties assumed same as heptane)	71.50
36	3,3-dimethylhexane	527.35	99	unknown {unknown c7}(properties assumed same as heptane)	71.50
37	1t,2c,3-trimethylcyclopentane	553.80	100	11 unknown c8 (properties assumed same as octane)	91.86
38	2,3,4-trimethylcyclopentane	91.69	101	unknown {unknown c8}(properties assumed same as octane)	40.83
39	2,3-dimethylhexane	496.05	102	unknown {unknown c8} (properties assumed same as octane)	567.48
40	1, 1,2-trimethylcyclopentane	358.41	103	12 {unknown c9} (properties assumed same as nonane)	176.61
41	2-methylheptane	3,925.35	104	n1 {unknown c8}(properties assumed same as octane)	34.70
42	4-methylheptane	1,627.16	105	n12 {unknown c9}(properties assumed same as nonane)	168.25
43	3-methyl-3-ethylpentane	568.78	106	unknown {unknown c9}(properties assumed same as nonane)	35.80
44	3-methylheptane	2,920.17	107	unknown {unknown c9}(properties assumed same as nonane)	35.80
45	1c,2t,3-trimethylcyclopentane	789.04	108	i6 {unknown c9}(properties assumed same as nonane)	78.76
46	1t,4-dimethylcyclohexane	2,471.59	109	n19 {unknown c9}(properties assumed same as nonane)	7.16
47	1,1-dimethylcyclohexane	1,401.45	110	18 {unknown c9}(properties assumed same as nonane)	175.41
48	2,2,5-trimethylhexane	402.99	111	19 {unknown c9}(properties assumed same as nonane)	72.79
49	3c-ethylmethylcyclopentane	115.89	112	n21 {unknown c9}(properties assumed same as nonane)	7.16
50	3t-ethylmethylcyclopentane	275.98	113	n24 {unknown c9}(properties assumed same as nonane)	110.98
51	2t-ethylmethylcyclopentane	331.77	114	n25 {unknown c9}(properties assumed same as nonane)	27.45

52	1,1-methylethylcyclopentane	29.67	115	n27 {unknown c9}(properties assumed same as nonane)	45.34
53	1t,2-dimethylcyclohexane	900.62	116	n29 {unknown c9}(properties assumed same as nonane)	151.55
54	octane	5,584.33	117	n30 {unknown c10}(properties assumed same as decane)	29.98
55	1c,4-dimethylcyclohexane	29.02	118	114 {unknown c10}(properties assumed same as decane)	142.55
56	2,4,4-trimethylhexane	40.74	119	n34 {unknown c10}(properties assumed same as decane)	73.28
57	2,3,5-trimethylhexane	204.57	120	118 {unknown c10}(properties assumed same as decane)	9.99
58	2,3,4-trimethylhexane	287.10	121	i19 {unknown c10}(properties assumed same as decane)	19.98
59	n2	91.86	122	unknown {unknown c10}(properties assumed same as decane)	19.98
60	1,1,4-trimethylcyclohexane	866.05	123	i21 {unknown c10}(properties assumed same as decane)	64.62
61	ethylcyclohexane	1,633.08	124	unknown {unknown c10}(properties assumed same as decane)	12.66
62	2,4-dimethylheptane	32.27	125	n32 {unknown c10}(properties assumed same as decane)	13.32
63	4,4-dimethylheptane	1,632.37			

5.10 The United States Coast Guard (“Coast Guard”) served as lead assessor in investigating the incident and arrived at the Refinery on August 28, 2017. From September 5, 2017 to September 8, 2017, ambient air monitoring was conducted, which picked up readings of VOCs with the MultiRAE and Toxic Vapor Analyzers. During the survey, the Coast Guard investigators experienced various health effects ranging from dizziness, soreness of throat, upper respiratory irritations, and headaches.

5.11 The modeled concentrations of detected contaminants were compared to TCEQ’s corresponding short-term health-based effects screening levels (“ESL”) or short-term health-based

air monitoring comparison values (“AMCV”). The following exceedances were detected:

- **Benzene**: Based on the modeling data, the 1-hour maximum predicted ground level concentration (“GLC_{smax}”) for benzene was 1.86 times higher than the 1-hour AMCV for benzene. The predicted maximum off-property, non-industrial ground level concentration (“GLC_{sni}”) for benzene was 1.08 times higher than the respective AMCV, and the predicted 24-hour GLC_{smax} was 1.16 times higher than the 24-hour AMCV; and
- **Methylcyclopentane**: Based on the modeling data, the predicted 1-hour GLC_{smax} for methylcyclopentane was 1.57 times the ESL.

VI. CIVIL PENALTIES FOR VIOLATIONS OF TCEQ RULES

Unauthorized Emissions Event

6.1 No person may cause, suffer, allow, or permit the emission of any air contaminant in violation of the Texas Health and Safety Code or any TCEQ rule or order. Tex. Health & Safety Code § 382.085(b). Operation of Tank 3 and its associated emissions from normal operation procedures of Tank 3 are authorized by PBR registration No. 106017. After registering under a PBR, all representation made in the certified registration, with regard to construction plans, operating procedures, and maximum emission rates become conditions upon which the facility permitted by rule must be constructed and operated. 30 Tex. Admin. Code § 106.6(b).

6.2 On August 27, 2017, the external floating roof of Tank 3 became partially submerged resulting in emissions of 240,050 pounds of VOCs, including 1,883 pounds of benzene. The emissions event lasted from August 27, 2017, through September 14, 2017, for a duration of 440 hours and 30 minutes—a period of 19 days. None of the emissions during the emissions event were authorized by Valero’s PBR, thus violating Tex. Health & Safety Code § 382.085(b) and 30 Tex. Admin. Code §§ 106.6(b) and 106.261(a)(2).

6.3 For a period of 19 days, Valero caused, suffered, allowed, or permitted the unauthorized emissions from Tank 3. Pursuant to Tex. Water Code § 7.102, the State is entitled to

civil penalties against Valero within the statutory range of not less than \$50 nor greater than \$25,000 for each contaminant identified in Paragraph 5.9 on each day that the contaminant was emitted during the emissions event in violation of Tex. Health & Safety Code § 382.085(b), Tex. Water Code § 7.101, and 30 Tex. Admin. Code §§ 106.6(b) and 106.261(a)(2).

VII. ATTORNEY'S FEES AND COSTS

7.1 This is an action brought by the State to recover civil penalties. If the State prevails in this action, 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. Tex. Water Code § 7.108. 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.

VIII. POST-JUDGMENT INTEREST

8.1 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 Defendant Valero Energy Partners LP be cited to appear and answer herein;
2. That the Court grant judgment against Valero Energy Partners LP for the appropriate civil penalties within the range allowed by law;
3. That the Court award the State its reasonable attorney's fees, court costs, and reasonable investigative costs in this action;
4. That the Court award the State post-judgment interest on all amounts awarded in this suit until paid in full; and

5. That upon final trial of this cause, the State be granted all other relief, general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

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