

Velva L. Price
District Clerk
Travis County
D-1-GN-17-003091
victoria benavides

D-1-GN-17-003091

NO. _____

CITY OF PEARLAND, TEXAS
Plaintiff,

and the

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

V.

BLUE RIDGE LANDFILL TX, LP
Defendant.

§ IN THE DISTRICT COURT
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§ **98th** JUDICIAL DISTRICT
§
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§
§
§ OF TRAVIS COUNTY, TEXAS

**PLAINTIFF CITY OF PEARLAND, TEXAS’ ORIGINAL PETITION,
REQUEST FOR DISCLOSURE AND APPLICATION FOR
TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the City of Pearland, Texas (“Pearland”) files its Original Petition, Request for Disclosure and Application for Temporary and Permanent Injunction against Defendant Blue Ridge Landfill TX, LP (“BRL”) and shows the Court the following:

DISCOVERY

1. Pearland will conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.3.
2. Pursuant to Texas Rule of Civil Procedure 194, Pearland requests that BRL disclose, within 50 days of the service of this petition and request, the information or material described in Rule 194(a) – (l).

RULE 47(c) DISCLOSURE

3. Pearland seeks monetary relief in excess of \$1,000,000.00 plus reasonable attorney's fees, reasonable investigative costs incurred and court costs. The monetary relief requested is within the jurisdictional limits of this court.

PARTIES

4. Plaintiff City of Pearland, Texas, is a political subdivision of the State of Texas and is authorized to bring this action by virtue of authority granted under Texas Water Code Ann. §7.351 (Vernon 2010).¹

5. The State of Texas, acting through the Texas Commission on Environmental Quality ("TCEQ"), is a necessary and indispensable party to this suit.² Service on the State is not necessary at this time.

6. Defendant Blue Ridge Landfill TX, LP is a Delaware Limited Partnership doing business in Fort Bend County, Texas and may be served through its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this case pursuant to Texas Water Code Ann. §7.351 (Vernon 2010).

8. Venue is proper in Travis County under Tex. Water Code §7.105(c)

9. Specifically, Pearland has standing to bring this suit under §7.351(a) of the Texas Water Code which states that a local government may institute a civil suit under Water Code Chapter 7, subchapter D, in district court, by its own attorney, against a person who committed, is

¹ Although this lawsuit is brought to enforce the Texas Solid Waste Disposal Act and associated rules and regulations, the Texas Water Code contains the enforcement provisions.

² Tex. Water Code §7.353 (Vernon 2010).

committing, or is threatening to commit a violation of Chapter 26 of the Texas Water Code, Chapter 361 of the Texas Health & Safety Code or a rule adopted under those chapters in the jurisdiction of the local government.³

STATEMENT OF FACTS

10. The Respondent owns and operates a landfill located at 2200 Farm-to-Market Road 521 in Fresno, Fort Bend County, Texas (the "Site").

11. Since at least 2015, Landfill Gas ("LFG") made up of methane, carbon dioxide, nitrogen and Non-Methane Organic Compounds ("NMOCs"), some of which are toxic, have been discharged from the Site. Because of the Site's poorly-designed and inefficiently-operated LFG collection and control system, the LFG has been discharged into the residential neighborhoods around the Site and resulted in the interference with the normal use and enjoyment of the property of Pearland residents.

12. From the period beginning in at least October 2015 to the present, BRL has been operating the Site in a manner which has resulted in the discharge of air contaminants which frequently interfere with the normal use and enjoyment of the property of Pearland residents.

13. From October 2015 to October 2016, over 1600 odor complaints have been lodged by Pearland area residents as a result of the discharge from the Site of air contaminants which have interfered with the normal use and enjoyment of their property.

14. From October 2016 to the present, hundreds of additional complaints have been made by Pearland area residents as a result of the discharge from the Site of more air contaminants which have interfered with the normal use and enjoyment of their property.

³ Tex. Water Code Ann. §7.351(a) (Vernon 2010).

CAUSES OF ACTION

15. Under its authority to enforce environmental laws and regulations pursuant to Texas Water Code §7.351(a), Pearland sues BRL for civil penalties for violations of the Texas Health and Safety Code (“Health & Safety Code”), the Texas Clean Air Act (“Clean Air Act”), and the rules issued pursuant to each statute.

Texas Clean Air Act Violations

16. The Texas Clean Air Act is found in Chapter 382 of the Health & Safety Code. The purpose of the Clean Air 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 esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.⁴

17. The Clean Air Act authorizes the TCEQ to adopt rules to carry out the intent and purposes of the Act.⁵ The TCEQ has promulgated rules based on that authority, found in chapters 101-122 of Title 30 of the Texas Administrative Code.

18. Texas Health & Safety Code §382.003 states:

“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.⁶

19. BRL has violated Health & Safety Code §§382.085(a) and (b).

⁴ Tex. Health & Safety Code §382.002.

⁵ Tex. Health & Safety Code §382.017.

⁶ Tex. Health & Safety Code §382.003.

- a. Under Health & Safety Code §382.085(a), it is a violation to “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.”⁷
- b. Under Health & Safety Code §382.085(b), it is a violation to “cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any commission rule or order.”⁸

20. BRL has engaged in acts and practices which are unlawful under Texas Health & Safety Code §§382.085(a) and (b). BRL has caused, suffered, allowed or permitted the emission of air contaminants at the Site and that activity caused or contributed to air pollution, in violation of Chapter 382 of the Health & Safety Code, during a time frame that spans from at least October 2015 to the present date.

21. BRL has violated TCEQ Rule 30 TAC §101.4.

22. Under 30 TAC §101.4, it is a violation to “discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.”⁹

⁷ Tex. Health & Safety Code §382.085(a).

⁸ Tex. Health & Safety Code §382.085(b).

⁹ 30 TAC §101.4.

23. BRL has engaged in acts and practices which are unlawful under 30 Texas Administrative Code §101.4. BRL has discharged air contaminants in such concentration and of such duration as to interfere with the normal use and enjoyment of property.

CIVIL PENALTIES

24. A person may not cause, suffer, allow, or permit a violation of a statute within the commission's jurisdiction or a rule adopted or an order or permit issued under such a statute.¹⁰

25. A person or entity that violates any provision of Chapter 361 of the Texas Health & Safety Code, Chapter 382 of the Texas Health & Safety Code, Chapter 26 of the Texas Water Code, or the provisions of the Texas Administrative Code adopted thereunder, is subject to a civil penalty of not less than \$50 nor more than \$25,000 for each day of each violation.¹¹ Each day of a continuing violation is a separate violation.¹² Each person who commits a violation is subject to a separate civil penalty within the statutory range for each day that person violated the applicable statute or rule. Pearland alleges that violations occurred continually since at least October 2015, and seeks a penalty within the statutory range set by law for each day of each violation against BRL. The potential civil penalties are outlined below.

26. Potential liabilities for a violation of the Texas Administrative Code and Health & Safety Code cited above range from \$50 to \$25,000 per day, and those amounts continue to accrue daily per Texas Water Code §7.102. In addition, pursuant to Texas Water Code § 7.108, Pearland asks this Court to award Pearland its attorney's fees, court costs and investigative costs incurred

¹⁰ Tex. Water Code §7.101.

¹¹ Tex. Water Code §7.102.

¹² *Id.*

in relation to this proceeding. If there is an appeal to the Court of Appeals or to the Supreme Court of Texas, Pearland seeks its additional attorney's fees and court costs on appeal.

**APPLICATION FOR TEMPORARY RESTRAINING ORDER,
TEMPORARY AND PERMANENT INJUNCTION**

27. City of Pearland requests this Court to issue a Temporary Restraining Order, a Temporary Injunction and a Permanent Injunction, ordering BRL to immediately cease and desist all of its illegal activity described herein, and mandating BRL to immediately correct the defects in design and operation of the Site that have allowed the nuisance odor to persist unabated. Water Code § 7.351(a) authorizes City of Pearland to seek injunctive relief for the same violations of the Water Code and TCEQ Rules.

28. The violations of Health and Safety Code §382.085 and Texas Admin. Code §101.4 have resulted in air pollution. Pearland will suffer immediate and irreparable injury, loss, or damage if BRL's conduct is not enjoined because additional emissions of contaminants into the air will mean additional air pollution.

29. Pearland does not have an adequate remedy at law due to the immediate health and environmental concerns. Pearland has exercised due diligence in prosecuting this claim. The injury to Pearland if BRL continues the conduct described above would outweigh any injury the restraining order and injunction might cause BRL and issuance of the injunction would not disserve the public interest.

30. All conditions precedent have been performed or have occurred.

PRAYER

1. For these reasons, City of Pearland prays for the following:

- a. That this Court issue a temporary restraining order and temporary injunction against Blue Ridge Landfill TX, LP as requested herein by City of Pearland;
- b. That upon final trial in this cause, the Court grant a permanent injunction ordering Blue Ridge Landfill TX, LP to immediately cease and desist all of its illegal activity described herein, and mandating Blue Ridge Landfill TX, LP to immediately correct the defects in design and operation of the Site that have allowed the nuisance odor to persist unabated.
- c. That upon final trial in this cause, the Court grant a money judgment against Blue Ridge Landfill TX, LP and in favor of City of Pearland for the civil penalties as permitted by law as set forth above;
- d. That upon final trial in this cause, the Court grant City of Pearland its reasonable attorney's fees, and reimbursement for court costs and investigative fees in connection with this action and any appeal;
- e. That upon final trial in this cause the Court grant City of Pearland prejudgment and post judgment interest as allowed by law; and
- f. That the Court grant such other and further relief to which City of Pearland may be justly entitled.

Respectfully submitted,

**OFFICE OF THE CITY ATTORNEY
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