

NO. D-1-GV-14-000267

ECTOR COUNTY, TEXAS	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
and the	§	
	§	
STATE OF TEXAS,	§	98TH
acting by and through the Texas	§	JUDICIAL DISTRICT
Commission on Environmental	§	
Quality,	§	
a Necessary and Indispensable Party	§	
	§	
V.	§	
	§	
ROYWELL SERVICES, Inc.	§	
	§	
Defendant.	§	OF TRAVIS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

Ector County, Texas, Plaintiff, complains of Roywell Services, Inc. Ector County intends to complain of additional parties in subsequent petitions.

A. BACKGROUND

Roywell Services Incorporated (“RSI”) operates a yard located at 2425 East Interstate 20, Odessa, Texas 79761. RSI also operates several other facilities in south Texas.

On January 30th, 2014 and February 10th, 2014, the City of Odessa Water treatment plant detected pollutants in the water which upset the functioning of the plant. The City of Odessa Water treatment plant believed the pollutant was delivered to the plant via the drainage system from a manhole. City of Odessa Water Plant officials noted Xylene was discovered as a pollutant. An investigation was initiated to determine the origin of the pollutant.

On February 28th, 2014, the Odessa Police Department was provided with information that indicated employees at RSI intentionally disposed of industrial hazardous waste directly into a City of Odessa manhole which was located in their yard.

The Odessa Police Department and Ector County Attorney's Office identified employees of RSI and conducted non-custodial interviews with those employees.

During the interviews, one employee ("Employee 1") claimed that on January 18, 2014 he witnessed two other employees ("Employee 2" and "Employee 3") utilize a pump to drain the contents of a lined pit on the STI property directly into a manhole. The manhole cover had been removed with company-owned equipment. This work was allegedly completed at the direction of their manager ("Manager 1"). Employee 1 claims the lined pit contained a mixture of acid, chemicals, and water. Employee 1 claims one of the owners of the company made threats against Employee 1 for reporting the incident, and stated that RSI employees have been instructed to avoid police interviews.

Employee 2 was interviewed in a non-custodial interview and claims that Manager 1 directed a transport truck containing 90 barrels of waste acid be released into the lined containment pit located on the premises. Later, some or all of the contents of that lined pit were dumped into the sanitary sewer line at Manager 1's direction. Manager 1 instructed Employee 2 and Employee 3 to remove a manhole cover in the yard and pump a waste acid, chemical, and water mix directly in the system.

Later, Manager 1 instructed Employee 2 and Employee 3 to dig a trench to funnel the waste directly into the manhole. Employee 2 stated the acid was "hot," meaning he could see the mixture in the pit bubble and dissolve caliche rock and dirt that he threw in it. Several SRI employees disclosed the location of the manhole on a satellite image, and all confirmed the same location on the SRI lot.

Manager 1 sat for a non-custodial interview, and confirmed that the SRI had a large tank on premises which contained the chemical Xylene. He also noted the location of the manhole on a satellite picture.

Manager 1 stated he was responsible instructing Employee 2 and Employee 3 to dispose of the acid and chemicals into the manhole, but claims he “did not know” if those actions were at the direction of SRI corporate management.

A second manager (“Manager 2”) also sat for an interview. He claims that he received a phone call from SRI on January 18th, 2014, at approximately 10:30am alerting him to the illegal disposal and pumping of waste acid into the City of Odessa drain. He claims Manager 1 told him it was only “fresh water.” Manager 2 claims that the following week, he discovered a trench was dug from the lined pit to the manhole built to drain waste acid from the lined pit into the city drain.

Waste dumped into the drain travelled through both the City of Odessa and unincorporated parts of Ector County. The City’s waste water treatment plant was not built or designed to handle that sort of waste, and the large amount of toxic chemicals caused problems with the facility.

B. COLORADO RIVER DANGER

At least some of the chemicals, acids or other liquids appear to have escaped the RSI facility into the unincorporated part of Ector County, and along the drainage ditch on the North side of Interstate Highway I-20. Liquids from that area drain into the Monahans Draw. In addition, the waste water treatment plant facility is immediately adjacent to the Monahans Draw, which begins in central Ector County and runs east for fifty-three miles to its mouth on Midland Draw, north of Interstate Highway 20 in northeast Midland County. Water from these draws

travels through Ector, Midland, Glasscock, Howard and Mitchell counties, and joins the Upper Colorado before making its way through Austin and draining to the Gulf of Mexico at Matagorda Bay.

The Defendants' actions violated multiple public health and environmental protection laws, including the Texas Solid Waste Disposal Act and the Texas Clean Air Act. Ector County seeks civil penalties, attorney's fees, and court costs. All conditions precedent have been performed or have occurred.

B. DISCOVERY

1. Ector County will conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.

RULE 47(c) DISCLOSURE

2. Ector County seeks monetary relief over \$200,000 but not more than \$1,000,000. However, the total maximum fines far exceed \$1,000,000, and Ector County reserves the right to revise this section of its pleadings. The monetary relief requested is within the jurisdictional limits of this court.

C. PARTIES

3. Plaintiff Ector County, 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

4. 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.

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

5. Defendant Roywell Services, Inc., is a Texas corporation, and may be served through its registered agents:

- a) Samuel J. Brown, at his place of business located at 2425 East Interstate 20, Odessa, Texas 79761;
- b) John D. McLain at his place of business located at 2425 East Interstate 20, Odessa, Texas 79761;
- c) Bette McLain at her place of business located at 2425 East Interstate 20, Odessa, Texas 79761;
- d) John D. McLain, Jr., at his place of business located at 2425 East Interstate 20, Odessa, Texas 79761.

D. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this case pursuant to Texas Water Code Ann. §7.351 (Vernon 2010). Venue is proper in Travis County under Tex. Water Code §7.105(c).

7. Specifically, Ector County 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 in a district court by its own attorney against a person who committed, is committing, or is threatening to commit a violation of Chapter 26 of the Texas Water Code, or Chapters 361 or 382 of the Texas Health & Safety Code.³

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

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

E. VIOLATIONS

I. Violations of the Texas Solid Waste Disposal Act

8. The Texas Solid Waste Disposal Act is found in Chapter 361 of the Texas Health & Safety Code. The purpose of the Solid Waste Disposal Act is to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste.⁴ Section 361.024 of the Health & Safety Code allows the TCEQ to adopt rules consistent with the Texas Solid Waste Disposal Act. The violations in this case can be broken into three separate categories: violations of a statute requiring a permit, violations of a statute by unlawful discharge of solid waste, and violations of a statute by unlawful storage of solid waste.

(a) Violations of statutes requiring a permit

9. 30 Texas Administrative Code §330.7(a) states:

...a person may not cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste⁵ unless such activity is authorized by a permit or other authorization from the commission.

10. 30 Texas Administrative Code §335.2(a) states:

No person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization.

11. 30 Texas Administrative Code §335.4(1) states:

No person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters

⁴ Tex. Health & Safety Code § 361.002 (Vernon 2010).

⁵ “Solid waste” means garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities.

in the state without obtaining specific authorization for such a discharge from the Texas Natural Resource Conservation Commission.

12. All Defendants⁶ have engaged in acts and practices which are unlawful under 30 Texas Administrative Code §§ 330.7(a), 335.2(a), and 335.4(1). Defendants have caused, suffered, allowed, or permitted the collection, handling, storage, processing, or disposal of industrial solid waste in such a manner as to cause the discharge of that waste into or adjacent to the water in the state without the proper authorization for 1 or more calendar days.⁷

(b) Violations of statutes by unlawful discharge of solid waste

13. 30 Texas Administrative Code §330.15(a)(3) states:

...a person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste...in such a manner as to cause the endangerment of human health and welfare or the environment.

14. Chapter 26 of the Texas Water Code regulates water quality control in Texas. The purpose of that regulation is to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries.⁸

15. Tex. Water Code §26.121(a)(1) states:

Except as authorized by the TCEQ, no person may discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste⁹ into or adjacent to any water in the state.¹⁰

⁶ The County alleges that each natural person Defendant is responsible for their own actions, omissions or conduct, and that the incorporated entity is responsible for the actions of its agents and employees under Texas agency law. The majority of claims in this matter are couched using the same violation trigger words: “caused,” “suffered,” “allowed,” and “permitted.” While the first trigger word, “cause”, implies a direct action or verbal directive by a defendant, the other triggers are passive and may be based on inaction or another basis for liability, such as ownership of the property.

⁷ In the Violations section, each violation is alleged for a specific number of days. The number of days in violation is based in part on Texas Water Code 7.102, which states “Each day of a continuing violation is a separate violation.”

⁸ Tex. Water Code §26.003 (Vernon 2010).

⁹ “Industrial waste” means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

16. Tex. Water Code §26.121(a)(2) states:

Except as authorized by the TCEQ, no person may discharge other waste into or adjacent to any water in the state 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.

17. Tex. Water Code §26.121(a)(3) states:

Except as authorized by the TCEQ, no person may 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.

18. Tex. Water Code §26.121(c) states:

No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any permit or order of the commission.

19. Tex. Water Code §26.121(d) states:

Except as authorized by the commission, no person may discharge¹¹ any pollutant¹², sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source¹³ into any water in the state.

20. Tex. Water Code §26.121(e) states:

No person may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter or of any rule, regulation, permit, or other order of the commission.

¹⁰ “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.

¹¹ “To discharge” includes 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.

¹² “Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state.

¹³ “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

21. All Defendants have engaged in acts and practices which are unlawful under 30 Texas Administrative Code §330.15(a)(3), and Tex. Water Code §§ 26.121(a)(1), (a)(2), (a)(3), (c), (d), and (e). The Defendants have caused, suffered, allowed, or permitted the discharge of waste and pollution in violation of Chapter 26 of the Texas Water Code for 1 or more calendar days.

(c) Violations of statutes by unlawful storage of solid waste

22. 30 Texas Administrative Code §335.4(2) states:

No person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause the creation and maintenance of a nuisance.

23. 30 Texas Administrative Code §335.4(3) states:

No person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause the endangerment of the public health and welfare.

24. All Defendants have engaged in acts and practices which are unlawful under 30 Texas Administrative Code §§ 335.4(2) and (3). The Defendants have caused, suffered, allowed or permitted the collection, handling, storage, processing, or disposal of industrial solid waste in such a manner so as to cause the endangerment of the public health and welfare, and so as to cause the creation and maintenance of a nuisance for 1 or more calendar days.

II. Violations of the Clean Air Act

25. The Texas Clean Air Act is found in Chapter 382 of the Texas 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.¹⁴ The violations in this case can be broken into two separate categories: violations of a statute requiring a permit, and violations of a statute by unlawful discharge of contaminants into the air.

(a) Violations of statutes requiring a permit

26. Texas Health and Safety Code §382.085(a) states:

Except as authorized by a commission rule or order, a person may not 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.

27. Texas Health and Safety Code §382.085(b) states:

A person may not 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.

28. All Defendants have engaged in acts and practices which are unlawful under Texas Health and Safety Code §§ 382.085(a) and (b). The Defendants have caused, suffered, allowed or permitted the emission of air contaminants, and that activity caused or contributed to air pollution, in violation of Chapter 382 of the Health and Safety Code, for more than 1 calendar day.

(b) Violations of statute by unlawful discharge of contaminants

29. The Clean Air Act authorizes the TCEQ to adopt rules to carry out the intent and purposes of the Act.¹⁵ The TCEQ has promulgated rules based on that authority, found in chapters 101-122 of Title 30 of the Texas Administrative Code.

30. 30 Texas Administrative Code §101.4 states:

No person shall 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

¹⁴ Tex. Health & Safety Code § 382.002 (Vernon 2010).

¹⁵ Tex. Health & Safety Code §382.017 (Vernon 2010).

welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

31. All Defendants have engaged in acts and practices which are unlawful under 30 Texas Administrative Code §101.4. The Defendants have discharged air contaminants that are known to adversely affect human health for more than 1 calendar day.

F. CIVIL PENALTIES

32. A person or entity who violates any provision of the Texas Health and Safety Code, the Texas Administrative Code, or any rule, order, or permit of the Texas Water Code is subject to a civil penalty of not less than \$50 nor more than \$25,000 for each day of each violation.¹⁶ Each day of a continuing violation is a separate violation.¹⁷ 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 regulation. Ector County alleges that violations have occurred continually for at least two months, and seeks a penalty within the statutory range set by law for each violation, for each day of each violation and against each defendant named now or in a later pleading.

PRAYER

33. For these reasons, Plaintiff prays for the following:

a) that this Court issue an order against the Defendants for the relief requested by Plaintiff;

b) that upon final trial in this cause, the Court grant civil penalties against Defendants, within the range allowed by law;

¹⁶ Texas Water Code Ann. §7.102 (Supp. 2002)

¹⁷ Texas Water Code Ann. §7.103 (Vernon 2000)

c) that upon final trial in this cause, the Court grant Ector County its reasonable attorney's fees and reimbursement for expenses, and that all costs be assessed against Defendants; and

d) that the Court grant such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

SCOTT & RAY, PLLC

P. O. Box 1353

2608 Stonewall Street

Greenville, Texas 75403-1353

Tel. (903) 454-0044

Fax. (903) 454-1514

www.ScottRayLaw.com

By: /s/ Daniel W. Ray

Daniel W. Ray

Texas Bar No. 24046685

Abigail Kweller

Texas Bar No. 24077300

**ATTORNEYS FOR PLAINTIFF,
ECTOR COUNTY, TEXAS**