

NO. \_\_\_\_\_

STATE OF TEXAS,	§	THE DISTRICT COURT OF
Plaintiff	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
RICHARD CROW, individually and d/b/a	§	
TERRELL SAND PIT,	§	
Defendant.	§	_____ JUDICIAL DISTRICT

**STATE OF TEXAS’S ORIGINAL PETITION,  
APPLICATION FOR TEMPORARY RESTRAINING ORDER  
AND ADDITIONAL INJUNCTIVE RELIEF,  
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

The State of Texas, by and through its Attorney General, Greg Abbott, on behalf of the people of Texas and the Texas Commission on Environmental Quality (TCEQ), files this original petition, application for temporary restraining order, and request for disclosure, and for cause of action would show the following:

**1. DISCOVERY CONTROL PLAN**

1.1 Pursuant to TEX. R. CIV. P. 190, Plaintiff intends that discovery in this case be conducted under Level 2.

**2. PARTIES**

2.1 Plaintiff, State of Texas, is authorized to bring this suit through its Attorney General at the request of the TCEQ pursuant to TEX. WATER CODE § 7.105(a).

2.2 Defendant Richard Crow is an individual who may be served with process in Kaufman County, Texas at the following addresses: (a) 18650 County Road 243, Terrell, Texas; (b) 7769 North State Highway 34, Terrell, Texas 75161; or (c) wherever he may be found.

### 3. JURISDICTION AND VENUE

3.1 This court has jurisdiction and venue over this suit pursuant to TEX. WATER CODE § 7.105(c) and TEX. GOV'T CODE § 2001.202.<sup>1</sup>

### 4. LEGAL AUTHORITY & REQUIREMENTS

4.1 This water quality lawsuit seeks to enjoin certain unlawful acts of the Defendant and seeks the assessment of civil penalties, attorney's fees, and court costs. TEX. WATER CODE §§ 7.032, 7.102, and 7.108.

4.2 "A person may not cause, suffer, allow, or permit a violation of a statute within the [TCEQ's] jurisdiction or a rule adopted or an order or permit issued under such a statute." TEX. WATER CODE § 7.101

4.3 When it appears that "a violation or threat of violation of a statute . . . has occurred or is about to occur" the State may bring suit in district court for "injunctive relief to restrain the violation or the threat of violation." TEX. WATER CODE § 7.032.

4.4 No filing fee or other security for costs is required of the State. TEX. CIV. PRAC. & REM. CODE § 6.001.

4.5 The State is entitled to a civil penalty of not less than \$50 nor greater than \$25,000 for each day of each violation by any person who causes, suffers, or allows a violation of a statute, rule, order, or permit within the TCEQ's jurisdiction. TEX. WATER CODE § 7.102.

4.6 TEX. WATER CODE § 26.121(a) contains the following prohibition:

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<sup>1</sup> Suits under § 2001.202 to enforce TCEQ rules or orders are to be filed in a district court authorized to exercise judicial review of such TCEQ actions, which are the district courts of Travis County, as per § 2001.176, TEXAS GOV'T CODE.

Except as authorized by the commission, no person may:

- (1) discharge . . . 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 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, unless the discharge complies with a person's . . . water pollution and abatement plan approved by the commission; 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 . . . .

4.7 Facilities with a Standard Industrial Classification (“SIC”) beginning with 10 through 14, must have a permit to discharge storm water into waters in the State. 30 TEX. ADMIN. CODE § 281.25(a)(4) (adopting by reference 40 C.F.R. § 122.26). In turn, 40 C.F.R. § 122.26(a)(1) requires a permit for a discharge of storm water associated with industrial activity.

4.8 Pursuant to its authority to issue a general permit authorizing the discharge of waste into or adjacent to waters in the state, the TCEQ issued Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR050000 (“General Permit”) on August 20, 2001. This permit sets forth detailed requirements, prohibitions, and conditions for the discharge of storm water associated with industrial activity and authorizes such discharges only according to notice requirements, effluent limitations, monitoring requirements, and other conditions set forth in the General Permit.

4.9 The Sector J of the General Permit governs storm water discharges for SIC codes beginning with the number 14. Sector J specifically regulates mine dewatering, which is defined

as “discharges from the mine pit of accumulated storm water and ground water seepage.”  
General Permit at 72.

4.10 To obtain authorization to discharge under the General Permit, a facility must submit a completed Notice of Intent (“NOI”) to the TCEQ requesting coverage. Before submitting an NOI, the facility must develop and implement a Storm Water Pollution Prevention Plan (“SWP3”). A SWP3 must contain the following minimum requirements:

A storm water pollution prevention plan (SWP3) must be developed and implemented before submitting [a Notice of Intent] for coverage under this general permit. The SWP3 must be maintained onsite or made readily available for review by authorized TCEQ personnel upon request. . . . The SWP3 shall be developed according to the requirements of this general permit to:

- (1) identify actual and potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the facility;
- (2) establish practices and any necessary controls that will prevent or effectively reduce pollution in storm water discharges from the facility and that ensure compliance with the terms and conditions of this general permit;
- (3) describe how the selected practices and controls are appropriate for the facility and how each will effectively prevent or lessen pollution;
- (4) discuss how controls and practices relate to each other such that together they comprise an integrated, facility-wide approach for pollution prevention in storm water discharges. The discussion may include references to literature or site-specific performance information on the selected controls and practices to demonstrate the appropriateness of each.

General Permit, Part III, § A. The SWP3 must also include other detailed requirements set out in the General Permit. These include a description of potential pollutants and sources with an inventory of exposed materials, a site map with the location of each outfall and other features,

and a description of pollution prevention measures and controls including a maintenance program, periodic monitoring, and record keeping.

## **5. BACKGROUND**

5.1 Under the business name “Terrell Sand Pit,” defendant Richard Crow (“Crow”) owns and operates a soil and sand mining facility (“Facility”) located at 18650 County Road 243 in Kaufman County, Texas. Crow’s operations at the Facility are classified under SIC codes 1442 (for the sand mining) and 1499 (for the top soil mining).

5.2 The TCEQ conducted investigations of the Facility on February 10, February 24, and March 18, 2004. During the February investigations, the TCEQ directly observed discharges of sediment laden water leaving the Facility and flowing to a tributary to nearby Club Lake. During the March investigation, the TCEQ again documented a sediment load in the tributary just below the Facility. This discharge comes via gravity flow from the Facility’s sand pit to two detention ponds and then into the tributary.

5.3 Additionally, the top soil mining operation at the Facility leaves sediments exposed to general storm water runoff. This runoff also flows into the tributary, which flows into Club Lake, thence to Bachelor Creek; thence to King Creek; thence to Cedar Creek Reservoir in Segment 0507 of the Sabine River Basin. This top soil mining operation is nearby the sand mine at the Facility.

5.4 Crow does not have authorization to discharge water from mine dewatering or storm water or any other activity at the Facility. Crow has not submitted an NOI to the TCEQ to obtain coverage under the General Permit. Crow does not have an SWP3 that establishes best

management practices to control storm water discharges from the Facility. Crow has asserted to the TCEQ that he is not required to have such authorizations for his Facility.

## **6. CIVIL PENALTIES FOR UNAUTHORIZED DISCHARGES**

6.1 In violation of TEX. WATER CODE § 26.121(a), Crow has caused or permitted the discharge of wastes into or adjacent to waters in the state without TCEQ authorization.

6.2 In addition, Crow has committed acts that cause or will cause pollution of waters in the state in violation of TEX. WATER CODE § 26.121(a).

6.3 The State seeks civil penalties from Crow within the statutory range (\$50 - \$25,000) for each day of each violation of TEX. WATER CODE § 26.121(a).

## **7. CIVIL PENALTIES FOR FAILURE TO OBTAIN THE GENERAL PERMIT**

7.1 Crow has failed to submit an NOI to the TCEQ and has not developed and implemented an SWP3 as required by the General Permit. Since beginning his mining operations at the Facility, Crow has violated 30 TEX. ADMIN. CODE § 281.25(a)(4) each and every day.

7.2 The State seeks civil penalties from Crow within the statutory range (\$50 - \$25,000) for each day of each violation of 30 TEX. ADMIN. CODE § 281.25(a)(4).

## **8. INJUNCTIVE RELIEF**

8.1 Crow has caused or allowed the discharge of wastes into or adjacent to waters in the state without authorization from the TCEQ. Crow has also failed to submit an NOI to the TCEQ and has not developed and implemented a SWP3 as required by the General Permit. Crow tells TCEQ that he needs no such authorization for his activities at the Facility.

8.2 Crow threatens to continue to violate TEX. WATER CODE § 26.121 and 30 TEX. ADMIN. CODE § 281.25(a)(4) unless restrained by the Court.

8.3 Pursuant to TEX. WATER CODE § 7.032, the State requests that this Court issue a temporary restraining order against Crow and his agents, and employees, and those in actual concert or participation with them, to cease and prevent all discharges of storm water associated with any industrial activity at the Facility into or adjacent to waters in the state. This includes, but is not limited to, discharges to the tributary to Club Lake.

8.4 The State requests that, after notice and hearing, this Court issue a temporary injunction against Crow and his agents, and employees, and those in actual concert or participation with them, to: (1) cease and prevent all discharges of storm water associated with any industrial activity at the Facility into or adjacent to waters in the state, including but not limited to discharge to the tributary to Club Lake, unless or until Crow obtains written approval from the TCEQ; (2) develop and submit to the TCEQ for approval a SWP3 in full accord with the General Permit; (3) implement the SWP3 after it is reviewed and approved by the TCEQ; and (4) after the SWP3 is implemented, submit an NOI to the TCEQ for authorization to discharge under the General Permit.

8.5 The State requests such additional temporary and permanent injunctive relief that the facts may warrant.

## **9. ATTORNEY'S FEES AND COSTS**

9.1 The State requests recovery of its attorney's fees, court costs, and investigation costs incurred in this case, as authorized by TEX. WATER CODE § 7.108 and TEX. GOV'T. CODE § 402.006(c).

### **10. REQUEST FOR DISCLOSURE**

10.1 Pursuant to TEX. R. CIV. P. 194, Crow is requested to disclose to the Plaintiff, within 50 days of service of this request, the information or material described in Rule 194.2 (a), (b), (c), (e), (f), and (i), and Rule 194.4.

### **PRAYER**

ACCORDINGLY, the State respectfully requests, as specified above, civil penalties, injunctive relief, attorney's fees, court costs, post-judgment interest, and all other relief to which it is entitled.

Respectfully submitted,

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Attorney General of Texas

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Deputy Attorney General for Litigation

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ATTORNEYS FOR PLAINTIFF  
STATE OF TEXAS

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Defendant.	§	_____ JUDICIAL DISTRICT

**AFFIDAVIT OF TODD JONES**

Before me, the undersigned authority, on this day personally appeared TODD JONES, who being sworn by me, deposed as follows:

My name is TODD JONES, 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 Texas Commission on Environmental Quality as a Environmental Investigator in the Region 4 office of the Texas Commission on Environmental Quality.

I have read the foregoing Original Petition and am familiar with the facts alleged. The facts alleged in paragraphs 5.1 through 5.4 of the petition are within my personal knowledge and are true and correct.

\_\_\_\_\_  
TODD JONES

Signed and sworn to before me on \_\_\_\_\_, 2004, by TODD JONES, whose identity is known to me.

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NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS