Filed
10 August 9 A10:01
Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GV-10-001237

NO. D-1-GV-10-001237

STATE OF TEXAS,	§	**THE DISTRICT COURT OF**
Plaintiff	§	
	§	
	§	
v.	§	**TRAVIS COUNTY, TEXAS**
	§	
BP PRODUCTS NORTH AMERICA INC.,	§	
	§	
Defendant	§	261ST **JUDICIAL DISTRICT**

PLAINTIFF'S ORIGINAL PETITION

The State of Texas files this Original Petition. This suit seeks civil penalties and attorneys' fees for violations of environmental laws at a facility owned and operated by BP Products North America Inc. in Texas City, Texas.

1. DISCOVERY

1.1 The State of Texas will conduct discovery under a Level 3 Discovery Control Plan. Tex. R. Civ. P. 190.

2. PARTIES

2.1 Plaintiff is the State of Texas (State). The Attorney General of Texas, at the request of the Texas Commission on Environmental Quality (TCEQ), is authorized to file suit in the name of the State for civil penalties for violations of the Texas Clean Air Act, Texas Health & Safety Code Chapter 382 (TCAA); Chapter 7 of the Texas Water Code; and TCEQ rules and orders promulgated under these statutes. Tex. Water Code § 7.105(a).

2.2 Defendant BP Products North America Inc. (BP) is a foreign for-profit corporation organized under the laws of Maryland. BP can be served through its registered agent, Prentice Hall Corp System, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

3. JURISDICTION AND VENUE

3.1 This Court has jurisdiction and venue is proper in Travis County, Texas because this is an action to recover civil penalties for violations of statutes, rules, orders, and permits within the TCEQ's jurisdiction. Tex. Water Code § 7.105(c).

4. APPLICABLE LAW

4.1 "Except as authorized by a [TCEQ] 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." TCAA § 382.085(a).

4.2 "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." TCAA § 382.085(b).

A. Emissions Events

4.3 An "Emissions Event" is an unauthorized emission of air contaminants from one or more emission points resulting from an upset event, unscheduled maintenance, startup, or shutdown activity. 30 Tex. Admin. Code (TAC) § 101.1(28).

4.4 A "Reportable Emissions Event" is an Emissions Event that within any 24 hour period emits unauthorized emissions from any emissions point equal to or greater than a specified reportable quantity. 30 TAC § 101.1(87). The reportable quantity varies based on the type of air contaminant. 30 TAC § 101.1(88).

B. Excessive Emissions Events

4.5 The TCEQ reviews Emissions Events to determine if the event was excessive. 30 TAC § 101.222(a). An "Excessive Emissions Event" determination reviews the following: "(1) the frequency of the facility's emissions events; (2) the cause of the emissions event; (3) the quantity and impact on human health or the environment of the emissions event; (4) the duration of the emissions event; (5) the percentage of a facility's total annual operating hours during which emissions events occur; and (6) the need for startup, shutdown and maintenance activities." *Id.*

4.6 When the TCEQ determines that an Emissions Event is excessive, the owner or operator of a facility must take action to reduce emissions by filing either a Corrective Action Plan (CAP) or a letter of intent to seek authorization for the emissions. 30 TAC § 101.223(a). When a CAP is appropriate, the facility owner or operator must submit the CAP to the TCEQ within 60 days of receiving notification from the TCEQ that the event is considered excessive. 30 TAC § 101.223(a)(1).

C. Civil Enforcement

4.7 Any person "who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the [TCEQ's] jurisdiction . . . shall be assessed for each violation a civil penalty not less than $50 nor greater than $25,000 for each day of each violation as the court or jury considers proper. Each day of a continuing violation is a separate violation." Tex. Water Code § 7.102.

4.8 The Attorney General, at the request of the TCEQ, is authorized to file suit in the name of the State for injunctive relief and civil penalties for violations of the Health and Safety Code, the Texas Water Code, and TCEQ rules, permits, and orders promulgated thereunder. Tex. Water Code §§ 7.105(a), 7.032(b).

4.9 If the State prevails, it is entitled to recover its reasonable attorney's fees, court costs, and investigative costs. Tex. Water Code § 7.108.

5. GENERAL BACKGROUND

5.1 BP operates a petroleum refinery at 2401 5th Avenue South, Texas City, Texas (the Refinery). It is the largest refinery in the "Family" of companies that includes BP and numerous corporate parents and affiliates worldwide. The Refinery has a feed capacity of approximately 460,000 barrels of crude oil per day. The Refinery's process units produce a wide range of petroleum products, including gasoline, distillates, heavy fuel oil, sulfuric acid, petroleum coke, and petrochemical feedstocks.

5.2 The Refinery emits air contaminants consisting primarily of volatile organic compounds (VOCs), hydrogen sulfide (H_2S), carbon monoxide (CO), oxides of nitrogen (NO_x), and sulfur dioxide (SO_2).

A. BP's Air Permits

5.3 TCEQ Air Flexible Permit No. 47256 (Permit 47256) regulates air emissions from the normal operation and startup, shut down, and maintenance of most of the Refinery's process units. Special Condition No. 15 of Permit 47256 prohibits (1) emissions of air contaminants from normal operations and startup, shut down, and maintenance in

excess of the limits on the Emissions Caps and Individual Emissions Limitations Table in the permit and (2) emissions of any amount of air contaminants resulting from Emissions Events.

B. Past TCEQ Administrative Enforcement

5.4 The recent historical record at the BP Refinery reveals a pattern of unnecessary and unlawful Emissions Events. BP's poor operation and maintenance of the Refinery are the primary cause of these Emissions Events. Between 2000 and 2007 alone, the TCEQ entered fifteen enforcement orders against BP for violations related to at least thirty-nine Emissions Events at the Refinery.[1] In addition to a history of repeated violations of the law related to unauthorized air emissions, many of these orders show a pattern of failure to properly report Emissions Events to the TCEQ.

5.5 These administrative orders show that BP's poor operating and maintenance practices have resulted in an egregious amount of Emissions Events in the past few years.

C. Current Civil Enforcement Action

5.6 The State is currently pursuing another environmental enforcement case against BP for violations associated with seventy-two additional Emissions Events which have occurred at the Refinery in the past five years. Of the seventy-two Emissions Events involved in that case, seven relate to the same unit involved in this action.

---

[1] *See* TCEQ Orders in Docket Nos. 1999-0068-AIR-E, 1999-1278-AIR-E, 2001-0329-AIR-E, 2004-1532-AIR-E, 2005-0284-AIR-E, 2005-0818-AIR-E, 2005-0706-AIR-E, 2005-0224-AIR-E, 2005-1027-AIR-E, 2006-0196-AIR-E, 2006-0262-AIR-E, 2006-0310-AIR-E, 2006-0400-AIR-E, 2006-0099-AIR-E, 2005-1839-AIR-E.

6. CLAIM NO. 1: CIVIL PENALTIES FOR EXCESSIVE EMISSIONS EVENT ON APRIL 6 – MAY 16, 2010, AT THE ULTRACRACKER

6.1 According to reports BP submitted to the TCEQ, on April 6, 2010, fire erupted on the inboard seal of the 100-J Compressor at the Ultracracker (ULC). The operator shut down the ULC and the Ultraformer No. 4 (UU4) unit upon discovering the fire. Upon restarting these units, BP routed material to flares for almost 40 days while it continued to operate the ULC and UU4 without the 100-J Compressor operating. BP admitted to the release of air contaminants to the atmosphere for 959 hours and 30 minutes, including the following:

Air Contaminant	Flare No. 3 Quantity in lbs.	ULC Flare Quantity in lbs.
CO	4,985.76	185,880.12
NO_x	978.45	36,541.14
SO_2	483.53	578.04
H_2S	5.25	83.14
Benzene	0.00	17,371.74
VOCs	4,413.71	262,472.82

6.2 In TCEQ investigation No. 824714, the TCEQ determined that BP failed to prevent the failure of the compressor and that proper maintenance could have prevented the event. According to reports and information BP submitted to the TCEQ, the failure and fire at the inboard compressor seal may have been caused by either liquid being present in the seal gas or solids contaminating the seal. BP reported that the seal filters may have failed, allowing iron sulfide particles to contact and damage the seal, causing it to fail and catch

fire. BP further indicated that periodically cleaning the seal piping would likely prevent such iron sulfide buildup, however BP never attempted such an effort.

6.3 Rather than shut down the ULC and UU4 while it waited to repair the 100-J Compressor, and thereby avoid releasing contaminants into the air, BP decided to continue operating those units so as not to reduce productivity. BP's choice to continue operation of these units without the 100-J Compressor resulted in the release of over 500,000 pounds of air contaminants to the environment. BP made very little attempt to minimize the emission of air contaminants caused by its actions, once again prioritizing profits over environmental compliance.

6.4 The TCEQ determined that this was an Excessive Emissions Event on July 9, 2010. BP has 60 days to provide the TCEQ with its CAP.

6.5 BP violated TCAA § 382.085 and Permit 47256 by emitting the air contaminants listed in paragraph 6.1 without authorization. Pursuant to Texas Water Code § 7.102, the State requests a civil penalty within the statutory range for each day of each release of each contaminant listed in paragraph 6.1.

7. CLAIM NO. 2: ATTORNEY'S FEES AND COSTS

7.1 Pursuant to Texas Water Code § 7.108, the State asks this Court to award the State its reasonable attorney's fees, court costs and reasonable investigative costs incurred in relation to this proceeding. If there is an appeal to the Court of Appeals or to the Supreme Court, the State seeks its additional reasonable attorney's fees and court costs on behalf of the State.

PRAYER

Accordingly, upon final trial of this action, the State of Texas requests the following relief against BP Products North America Inc.:

1. that BP Products North America Inc. be cited to appear and answer in this cause of action;
2. that upon final trial of this cause, the State have a money judgment against BP Products North America Inc. for civil penalties, as stated above, plus interest at the legal rate from the date of judgment until fully paid;
3. that the State be awarded its reasonable attorney's fees, investigative costs, and all of its court costs incurred in this action, plus interest, at the legal rate from the date of judgment until fully paid; and
4. that the State have all other relief, general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

BILL COBB
Special Assistant and Senior Counsel to the Attorney General

BARBARA B. DEANE
Chief, Environmental Protection and Administrative Law Division

DAVID PREISTER
Chief, Environmental Protection Section

JANE E. ATWOOD
Assistant Attorney General
State Bar No. 00796144
Office of the Attorney General of Texas
Environmental Protection and
Administrative Law Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2012
(512) 320-0911 (Facsimile)

ATTORNEYS FOR THE STATE OF TEXAS