

No. _____

STATE OF TEXAS,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ARUBA PETROLEUM, INC.,	§	
Defendant.	§	_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

The State of Texas ("State") on behalf of the Texas Commission on Environmental Quality ("TCEQ" or "Commission") files this *Original Petition*. This is a civil enforcement suit seeking civil penalties and attorney's fees for violations of environmental laws caused by unauthorized emissions from equipment associated with a natural gas production well site owned and operated by Aruba Petroleum, Inc. ("Aruba Petroleum") in Wise County, Texas.

I. DISCOVERY

1.1 The State will conduct discovery under a Level 2 Discovery Control Plan. Tex. R. Civ. P. 190.

II. PARTIES

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

2.2 Defendant Aruba Petroleum is a corporation organized under the laws of Texas. Aruba Petroleum can be served through service on its registered agent, James L. Poston, 555 Republic Drive, Suite 505, Plano, Texas 75074, or wherever he may be found.

III. JURISDICTION AND VENUE

3.1 This Court has jurisdiction and venue is proper in Travis County, Texas. Tex. Water Code § 7.105(c).

IV. APPLICABLE LAW

A. Statutory Provisions

4.1 The TCEQ is the state agency with responsibility for managing air quality, Tex. Health & Safety Code § 382.011. The TCAA is set out in Chapter 382 of the Texas Health and Safety Code. The enforcement provisions applicable to the TCAA and TCEQ rules and orders adopted thereunder, and found in Chapter 7 of the Texas Water Code.

4.2 “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.” Tex. Water Code § 7.101.

4.3 Any person “who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the Commission’s jurisdiction to enforce” 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.

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

4.5 If the State prevails, it is entitled to reasonable attorney's fees, court costs, and investigative costs. Tex. Water Code § 7.108; Tex. Gov't Code § 402.006.

4.6 "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." Tex. Health & Safety Code § 382.085(a).

4.7 "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 [TCEQ] rule or order." Tex. Health & Safety Code § 382.085(b).

4.8 The TCAA defines an "air contaminant" as "particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural." Tex. Health & Safety Code § 382.003(2).

4.9 The TCAA defines "air pollution" as "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.” Tex. Health & Safety Code § 382.003(2).

4.10 “Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a permit or permit amendment from the [TCEQ].” Tex. Health & Safety Code § 382.0518(a).

B. Texas Administrative Regulations

4.11 “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 welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.” 30 Tex. Admin. Code § 101.4.

4.12 A permit is required before construction of any facility that may emit air contaminants. 30 Tex Admin. Code § 116.110(a).

V. GENERAL BACKGROUND

5.1 Aruba Petroleum, Inc., owns the Wright Lease 6H, and operates a natural gas production well site with one gas well, two storage tanks, and a separator located 1/4 mile southeast of the intersection of Star Shell Road and Lions Paw Court, Decatur, Wise County, Texas (“Site”). As a result of processes at the natural gas well site, air contaminants are emitted. The Defendant has not sought authorization from the TCEQ, and thus these air contaminant emissions are unauthorized by the TCEQ pursuant to the TCAA.

5.2 Air emissions from the Site at issue here are governed by TCEQ pursuant to 30 Tex. Admin. Code § 116.110, and Texas Clean Air Act § 382.085(b).

5.3 In response to complaints from nearby property owners, on July 25, 2010, TCEQ staff conducted an on-site investigation, which documented that the Defendant was operating a natural gas production well site without proper authorization to emit air contaminants from TCEQ. The Defendant failed to provide the TCEQ investigator with documentation demonstrating prior authorization from TCEQ allowing the release of air contaminants at the Site.

5.4 During the July 2010 investigation, TCEQ investigators documented and observed that Aruba Petroleum has no permit and failed to demonstrate that it met Permit By Rule (“PBR”) requirements, pursuant to 30 Tex. Admin. Code §§116.110(a)(4) (relating to the applicability for Permit Applications), and 106.352 (regulating PBRs relating to the operation of oil and gas wells).

5.5 On July 25, 2010, TCEQ investigators also observed that the air contaminants emitted exceeded the TCEQ’s Air Monitoring Comparison Values (“AMCVs”) on July 25, 2010, from the natural gas production well site at the Site and consisted primarily of various species of volatile organic compounds (“VOCs”). During the investigation, TCEQ staff collected air samples at two different locations at the Site using summa canisters. The air samples were later sent the TCEQ Austin Laboratory on July 26, 2010, for analysis of VOCs. The laboratory results showed that five compounds exceeded the short-term health effects

for the AMCVs, twenty long term health based AMCVs, and ten odor AMVCs.

5.6 The emissions noted at the time of the July 25, 2010, investigation were of such concentration and duration that they affected (or may have affected) the health of the TCEQ investigator at an off-site monitoring location and exceeded five short-term health based AMCVs, twenty long term health based AMCVs, and ten odor AMVCs. The odors from the air contaminants emitted were of such frequency, intensity, duration, and offensiveness as to interfere with the normal use and enjoyment of property for the nearby property owners.

5.7 Additionally, during the July 2010 investigation, the TCEQ investigator observed and documented that he experienced the physical effects of the odor emissions; specifically, he felt dizziness and experienced a sore throat. The TCEQ investigator's physical effects as result of the odor, were of such concentration and of such duration that they may have tended to be injurious to or adversely affected human health or welfare. These odors also impacted offsite properties, as documented by complaints received by TCEQ from surrounding residents.

5.8 As set forth below, due to a failure of Aruba Petroleum to prevent the emitted air contaminants into the atmosphere without authority to do so, the TCEQ has requested the Attorney General to seek civil penalties from Aruba Petroleum.

VI. VIOLATIONS

A. No Authority to Emit Air Contaminants

6.1 During the July 25, 2010, TCEQ investigation of the Site, TCEQ staff observed

and documented violations of State law and TCEQ rules and regulations. Specifically, TCEQ staff documented that there were two storage tanks and a separator at the Site where unauthorized air contaminants were being emitted as a result of processes occurring at the natural gas well site. Defendant emitted such air contaminants without a permit and did so in violation of Tex. Health & Safety § Code 382.005(b); Tex. Water Code § 7.101; and 30 Tex. Admin. Code § 116.110(a). Because 30 Tex. Admin. Code § 116.110 requires that an operator receive authority from the Commission prior to construction of a facility, Defendant has violated Tex. Health & Safety Code § 382.005(b); Tex. Water Code § 7.101; and 30 Tex. Admin. Code § 116.110(a). Defendant has violated these provisions, based on information and belief, since at least the first date of operations at the Site and continuing until the present.

B. Regulatory Nuisance

6.2 Moreover, during the July 25, 2010 investigation the TCEQ staff documented that the Defendant failed to control emissions at the Site. The emissions were in such concentration and of such duration that they: (A) were or may have tended to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; and (B) interfered with the normal use or enjoyment of animal life, vegetation, or property, in violation of Tex. Health & Safety Code § 382.85(a); Tex. Water Code § 7.101; and 30 Tex. Admin. Code § 101.4.

VII. CIVIL PENALTIES

7.1 The State requests that Aruba Petroleum be assessed a civil penalty of not less than \$50, nor more than \$25,000, for each day of violation and for each act of violation, as the Court or jury may deem proper, in accordance with Water Code § 7.102.

VIII. ATTORNEY'S FEES AND COSTS

8.1 The State requests recovery from Aruba Petroleum of its attorney's fees, investigation costs, and court costs expended in the prosecution of this case as authorized by Texas Water Code § 7.108 and Texas Government Code § 402.006(c).

PRAYER

ACCORDINGLY, the State respectfully requests:

1. That civil penalties be assessed as requested in this petition, along with post-judgment interest on the amount awarded by the Court;
2. That the State recover its attorney's fees, investigation costs, and court costs in this case; and
3. That the State be granted all other relief to which it is entitled.

Respectfully submitted,

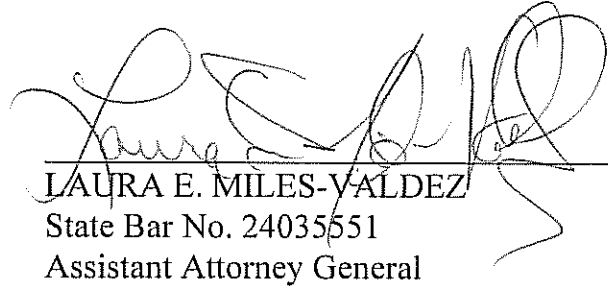
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