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TROX
CASO

No. 2009-32636

HARRIS COUNTY, TEXAS Plaintiff	§	IN THE DISTRICT COURT OF
and	§	
THE STATE OF TEXAS acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party	§	HARRIS COUNTY, TEXAS
vs.	§	
Klaus Genssler, Individually, and d/b/a U.S. Oil Recovery, L.P. MCC Recycling, L.L.P. and Genssler Environmental Holdings, LLC Defendants	§	125th JUDICIAL DISTRICT

FILED
Loren Jackson
District Clerk
NOV 30 2009
Time: _____ Harris County, Texas
By _____ Deputy

THIRD TEMPORARY RESTRAINING ORDER

On the ___ day of _____, 2009, plaintiff, Harris County, Texas, filed its third application for a temporary restraining order.

After reviewing Harris County's petition and the facts contained in the attached affidavits, the Court finds that a Temporary Restraining Order should be issued because U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., are likely to violate The Texas Clean Air Act and its regulations, the Texas Clean Water Act and its regulations, the Texas Solid Waste Disposal Act and its regulations, and the Texas Administrative Code and its regulations, the Court further finds that Harris County's Third Temporary Restraining Order should be granted and defendants, U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., must immediately adhere to the specific restrictions listed throughout this Order to prevent the alleged future discharge of ignitable waste under North Richey, a public road in Pasadena, Texas and into a publically owned treatment works (POTW), to prevent

the alleged future emission of benzene in excess of levels protective of human health generated by the processing and storage of waste in open tanks, containers or surface impoundments at defendants' waste processing, oil recovery and wastewater treatment facilities located in or near the 200 thru the 400 blocks of North Richey, Pasadena, Texas and to prevent the alleged future unauthorized discharges of waste into any water in the State of Texas.

The Court finds that an immediate and irreparable harm exists to the public health and safety because of the dangerous storage of waste in roll-off boxes, the transport of ignitable waste under a public road and into a publically owned wastewater treatment plant and because dangerous level of air contaminants are being emitted all from facilities and operated owned in whole or in part by the defendants named herein and located in the 200 and 400 blocks of North Richey, Pasadena, Texas..

The Court further finds that Harris County has pled all of the requisites required for the Court to issue a temporary restraining order as well all of the facts necessary to support the temporary restraining order granted herein.

IT IS THEREFORE ORDERED that Harris County's application for temporary restraining order is granted. Defendants, U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., their officers, agents, servants, employees, ~~and attorneys~~, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise are hereby ORDERED to immediately comply with the following demands:

1. U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., their officers, agents, servants, employees, ~~and attorneys~~, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise are hereby **ORDERED** to immediately, upon notice of this Order, stop releasing the air

contaminant benzene in excess of the TCEQ Long-term Effect Screening Level of 1.4 parts per billion by volume or Short-term Effect Screening Level of 54 parts per billion for short term ~~.40 parts per billion by volume~~ from 200 North Richey and 400 North Richey. As used throughout this document, the definition of *"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. (This definition is taken from 30 Texas Heath and Safety Code 382.003).

2. U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., their officers, agents, servants, employees, ~~and attorney~~s, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise are hereby **ORDERED** to immediately, upon notice of this Order, stop all foreseeable discharges of waste into or adjacent to any water in the state from the defendants' facilities at 200 North Richey and 400 North Richey in violation of Chapter 26.121 of the Texas Water Code (after TWC). *"Water"* or *"water in the state"* means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, 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 non-navigable, 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. For the purpose of this order the definition of water or water in the state come from TWC §26.001. As used in this document the term *"Waste"* means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, (As defined in this section and this definition is taken from TWC 26.001 - (6)). As used herein the term *"Sewage"*

means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation. (This definition is taken from TWC 26.001 (7)). As used herein the term *"Industrial waste"* means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business. (This definition is taken from TWC 26.001 (11)). As used herein the term *"Other waste"* means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste, that may cause impairment of the quality of water in the state. (This definition is taken from TWC 26.001 (12)).

3. U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., are hereby **ORDERED** to ~~immediately~~ w/in 72 hours, upon notice of this Order, stop releasing total volatile organic compounds ~~(VOC) in excess of 3.0 parts per million~~ (WITHOUT AUTHORIZATION.) from 200 North Richey ~~and 400 North Richey~~. *"Volatile Organic Compounds"* means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions. (This definition is taken from 40 CFR 51.100(s)).

4. U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., their officers, agents, servants, employees, ~~and attorneys~~, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise are hereby **ORDERED** to, within 10 days of the signing of this Order, remove all leaking roll-off containers and their contents located at the USOR facility at 400 North Richey

and dispose of the contents at a Texas Commission on Environmental Quality (TCEQ) authorized facility that is not affiliated with U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., or Genssler Environmental Services, L.L.C. in any way. In addition, defendants must furnish to Harris County disposal receipts showing this disposal has taken place at a TCEQ authorized facility that is not affiliated with U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., or Genssler Environmental Services, L.L.C. within 10 business days of delivery to said TCEQ authorized facility. Said receipts are to be delivered to Laura Cahill, Assistant County Attorney, 1019 Congress 15th Floor, Houston, Texas 77002.

5. U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., their officers, agents, servants, employees, ~~and attorneys,~~ and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise are hereby **ORDERED** to immediately, upon notice of this Order, stop the foreseeable discharge of any pollutant from 200 North Richey or 400 North Richey that may create a fire or explosion hazard in any POTW. This potential to create a fire or explosion hazard shall be determined by using EPA Standard Method 1020 for the characteristic of ignitability as described in 40 CFR 261.21 and as set out in 40 CFR 403.5 (b). As used herein the term *"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. (This definition is taken from TWC 26.001 (13).

6. U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., their officers, agents, servants, employees, ~~and attorneys~~, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise are hereby ORDERED that prior to discharging or sending any waste from the USOR facility located in the 400 block of North Richey, Pasadena, Texas to the MCC facility located in the 200 block of North Richey, Pasadena, Texas they will determine if the waste is hazardous by using EPA Standard Method 1020 for the characteristic of ignitability as described in 40 CFR 261.21 and as set out in 40 CFR 403.5 (b) which states "(b) Specific prohibitions. In addition, the following pollutants shall not be introduced into a POTW: (1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21" 40 CFR 261.21 states "261.21. Characteristic of ignitability. (a) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties: (1) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume and has flash point less than 60 °C (140 °F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D 93–79 or D 93–80 (incorporated by reference, see §260.11), or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D 3278–78.

7. U.S. Oil Recovery, L.P., MCC Recycling, L.L.P., and Genssler Environmental Holdings, L.L.C., their officers, agents, servants, employees, ~~and attorneys~~, and upon those persons in active concert or participation with them who

receive actual notice of the order by personal service or otherwise are hereby **ORDERED** that prior to discharging or sending any waste from the MCC or U.S. Oil Recovery facilities located in the 200 and 400 blocks of North Richey, Pasadena, Texas to a Publicly Owned Treatment Works or POTW they will determine if the waste is hazardous by using EPA Standard Method 1020 for the characteristic of ignitability as described in 40 CFR 261.21 and as set out in 40 CFR 403.5 (b). The term *Publicly Owned Treatment Works* or *POTW* means a treatment works as defined by section 212 of the Federal Clean Water Act, which is owned by a State or municipality (as defined by section 502(4) of the federal Clean Water Act). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant. The term also means the municipality as defined in section 502(4) of the Federal Clean Water Act, which has jurisdiction over the Indirect Discharges to and the discharges from such a treatment works. The term is taken from 40 CFR 403(q).

IT IS FURTHER ORDERED that, pursuant to Tex. Civ. Prac. & Rem. Code. Ann. §6.001 that the requirement of a bond is waived by the Court and Harris County is not required to file a bond in support of this Order.

IT IS FURTHER ORDERED that if any provision of this Temporary Restraining Order is determined by a court to be unenforceable or void for any reason, that to the extent permitted by law, any other provision of this Order that is not effected by that determination shall remain in full force and effect.

IT IS FURTHER ORDERED that the Clerk of the Court shall immediately issue a writ of injunction, and a precept for the temporary restraining order and a notice of hearing for the hearing set for the temporary injunction set below in this Temporary Restraining Order and upon request from Harris County shall issue any other process that may be required to effect this Temporary Restraining Order.

IT IS FURTHER ORDERED that a temporary injunction hearing is set at 9:00 a.m. on the 7th day of December, 2009 in the 125th Judicial District Court of Harris County, Texas.

IT IS FURTHER ORDERED that unless renewed by this Court or another court that this Temporary Restraining Order expires at midnight, December ~~12~~ 7, 2009.

SIGNED this 30th day of November, 2009.

JUDGE PRESIDING

APPROVED AND ENTRY REQUESTED:

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