

I.
DISCOVERY

1.1 Pursuant to Rules 190.4 of the Texas Rules of Civil Procedure, Plaintiffs respectfully request that discovery be conducted pursuant to Level 3 Discovery and that a discovery control plan be entered to govern this case.

1.2 This case is not subject to the restrictions of expedited proceedings under Rule 169 because Harris County's current claims for civil penalties are in excess of \$1,000,000. Tex. R. Civ. P. 47(c)(5).

II.
PLAINTIFFS

2.1 Plaintiff Harris County, Texas ("Harris County"), a political subdivision of the State of Texas, files this action pursuant to Texas Water Code § 7.351.

2.2 The State of Texas (the "State"), acting on behalf of the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), is a necessary and indispensable party to this action. Tex. Water Code § 7.353.

III.
DEFENDANTS

3.1 Volkswagen of America is a foreign for-profit corporation organized under the laws of New Jersey. Volkswagen can be served through its registered agent Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, Texas 78701-4234, or wherever it may be found.

3.2 Audi of America is a foreign limited-liability company organized under the laws of Delaware. Audi of America can be served through its registered agent Corporation Service Company at 2711 Centerville Road, Wilmington, Delaware 19808, or wherever it may be found.

IV.
JURISDICTION AND VENUE

4.1 This Court has jurisdiction over this case and venue is proper in Harris County because Harris County is the county in which the violations occurred and this is an action to enforce Chapter 382 of the Texas Health and Safety Code and the TCEQ rules promulgated thereunder. Tex. Water Code § 7.105, 7.351

V.
APPLICABLE LAW

A. Regulation of Air Quality

1. Authority

5.1 The TCEQ is the administrative agency that is primarily responsible for regulating air quality in Texas. Tex. Health & Safety Code § 382.011. The Texas Clean Air Act (“TCAA”) is set out in Chapter 382 of the Texas Health and Safety Code, and the TCEQ has adopted rules that further implement the requirements and restrictions of the TCAA. *See generally* 30 Tex. Admin. Code Chapters 101 through 122.

5.2 Harris County is authorized to bring suit for civil penalties and injunctive relief if it appears that there is a violation or threat of a violation of Chapter 382 of the Texas Health and Safety Code or of a rule, permit, or order issued thereunder that has occurred or is occurring in Harris County. Tex. Water Code § 7.351(a), 7.105.

2. Unauthorized Air Emissions

5.3 “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.” Tex. Health & Safety Code § 382.085(a).

5.4 “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).

5.5 The TCAA defines “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).

3. Anti-Tampering Requirements

5.6 Any person owning or operating any motor vehicle or motor vehicle engine on which is installed or incorporated a system or device used to control emissions from the motor vehicle shall maintain the system or device in good operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. 30 Tex. Admin. Code § 114.20(a).

5.7 No person may remove or make inoperable any system or device used to control emissions from a motor vehicle or motor vehicle engine or any part thereof, except where the purpose of removal of the system or device, or part thereof, is to install another system or device, or part thereof, which is equally effective in reducing emissions from the vehicle. 30 Tex. Admin. Code § 114.20(b).

5.8 No person may sell, offer for sale, lease, or offer to lease in the State of Texas any motor vehicle unless the control systems or devices that were originally a part of the motor vehicle or motor vehicle engine, or an approved alternate control system or device, is in good operable condition. 30 Tex. Admin. Code § 114.20(c).

5.9 No person may sell, offer for sale, or use any system or device which circumvents or alter any system, device, engine, or any part thereof, installed by a vehicle manufacturer during actual in-use operation of a motor vehicle on Texas roadways. 30 Tex. Admin. Code. § 114.2(e).

4. Causing, suffering, allowing, and/or permitting a violation of a statute, rule, order or permit is prohibited

5.10 “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 statute.” Tex. Water Code § 7.101.

5.11 “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..” Tex. Health & Safety Code § 382.085(a).

5.12 “A person may not cause, suffer, allow, or permit ... the performance of any activity in violation of this chapter or of any [TCEQ] rule or order.” Tex. Health & Safety Code § 382.085(b).

B. Enforcement: Civil Penalties

5.13 A person who violates the Texas Health and Safety Code or a Commission, permit, rule, or order is liable for a civil penalty of not less than \$50 no more than \$25,000 for each day of each violation. Tex. Water Code § 7.102. Each day of continuing violation is a separate violation. *Id.*

5.14 A “person” includes “corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.” Tex. Gov’t Code § 311.005(2).

5.15 Harris County is authorized to file suit for injunctive relief and civil penalties for violations of Chapter 7 of the Texas Water Code and Chapter 382 of the Texas Health and Safety Code, and Commission rules and orders promulgated under these statutes. Tex. Water Code §§ 7.105, 7.351.

VI.
VOLKSWAGEN EMISSIONS SCANDAL

6.1 Volkswagen manufactured and installed software in the electronic control module (“ECM”) of vehicles that sensed when the vehicle was being testing for compliance with emission standards. The software could detect when the emissions were being tested by the “position of the steering wheel, vehicle speed, duration of the engine’s operation, and barometric pressure.” At such time, the ECM would run software that produced compliant emission results. At all other times – during normal operations – the vehicle ECM ran software that reduced the effectiveness of the emission control system. As a result, during “normal” operations, the vehicle emitted NOx at an estimated 10 to 40 times above allowable levels.

6.2 Volkswagen took these actions related to, at least, the VW Jetta, Jetta Sportswagen, Golf, Beetle, Beetle Convertible, and Audi A3 models, beginning in 2009 and continuing until August 31, 2015.

6.3 NOx, short for nitrogen oxides, form ozone when they are combined with volatile organic compounds (VOCs) in the presence of sunlight.

6.4 Both NOx and VOCs are a component of vehicle emissions.

6.5 Further, NOx emissions form fine particles in the atmosphere, referred to as particulate matter.

6.6 Harris County has long been plagued with poor air quality due to emissions from various sources, ranging from industrial to vehicular traffic. Harris County is designated as non-attainment for ozone, which even at low levels can cause health impacts, including chest pain, coughing, throat irritation, and congestion. Ozone and particulate matter are associated with increased incidence of illness and premature mortality.

6.7 Based on an initial investigation, it is conservatively estimated that starting with its 2009

model year through August 31, 2015, Volkswagen sold more than 6,000 of the fraudulently manipulated emission control vehicles in Harris County. However, Harris County's investigation into the number of tampered vehicles sold is on-going and the number is expected to increase.

VII. **VOLKSWAGEN VIOLATIONS**

7.1 Volkswagen violated Tex. Water Code § 7.101 and Tex. Health & Safety Code § 382.085(a) by causing, suffering, allowing, and/or permitting the emission an air contaminant without authorization of a TCEQ rule or order.

7.2 Volkswagen violated Tex. Water Code § 7.101 and Tex. Health & Safety Code § 382.085(a) by causing, suffering, allowing, and/or permitting the performance of an activity that causes or contributes to, or that will cause or contribute to, air pollution without authorization of a TCEQ rule and/or order.

7.3 Volkswagen violated Tex. Water Code § 7.101 and Tex. Health & Safety Code § 382.085(b) by causing, suffering, allowing, and/or permitting the emission an air contaminant in violation of the Texas Clear Air Act and/or a TCEQ rule and/or order.

7.4 Volkswagen violated Tex. Water Code § 7.101, Tex. Health & Safety Code § 382.085(b), and 30 Tex. Admin. Code § 114.20(a) by causing, suffering, allowing, and/or permitting one or more person(s) owning or operating a motor vehicle or motor vehicle engine, on which was installed or incorporated a system or device used to control emissions from the motor vehicle, to operate the motor vehicle or motor vehicle engine without the device in good operable condition.

7.5 Volkswagen violated Tex. Water Code § 7.101, Tex. Health & Safety Code § 382.085(b), and 30 Tex. Admin. Code § 114.20(b) by causing, suffering, allowing, and/or permitting one or more person(s) to remove or make inoperable any system or device used to control emissions

from a motor vehicle or motor vehicle engine or any part thereof in a manner not authorized by 30 Tex. Admin. Code § 114.20.

7.6 Volkswagen violated Tex. Water Code § 7.101, Tex. Health & Safety Code § 382.085(b), and 30 Tex. Admin. Code § 114.20(c) by causing, suffering, allowing, and/or permitting one or more person(s) to sell, offer for sale, lease, or offer to lease in the State of Texas a motor vehicle without the control systems or devices that were originally a part of the motor vehicle or motor vehicle engine, or an approved alternate control system or device, in good operable condition.

7.7 Volkswagen violated Tex. Water Code § 7.101, Tex. Health & Safety Code § 382.085(b), and 30 Tex. Admin. Code § 114.20(e) by causing, suffering, allowing, and/or permitting one or more person(s) to sell, offer for sale, or use a system or device which circumvents or alters a system, device, engine, or any part thereof, installed by a vehicle manufacturer during actual in-use operation of a motor vehicle on Texas roadways.

VIII. CIVIL PENALTIES

8.1 Harris County requests that the Defendants be assessed a civil penalty between \$50 and \$25,000 for each day and act of violation, with each daily violation of each statutory provision being a separate violation. Tex. Water Code § 7.102. Harris County is not seeking penalties for violations that took place after August 31, 2015 in this petition.

IX. ATTORNEY'S FEES AND COSTS

9.1 Pursuant to Texas Water Code §§ 7.108 and/or 7.354, Harris County asks this Court to award Harris County its reasonable attorney's fees, costs of court 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, Harris County seeks its additional attorney's fees and court costs.

PRAYER

Harris County, Texas prays for judgment against the Defendants as follows:

1. That upon final trial of this cause, Harris County shall have a money judgment against Defendants for civil penalties, as stated above, plus interest at the legal rate from the date of judgment until paid;
2. That upon final trial of this cause, Harris County shall have a money judgment against Defendants for attorney's fees, reasonable investigative costs, and all of its court costs in this action, plus interest at the legal rate from the date of judgment until fully paid; and
3. That upon final trial of this cause, Harris County be granted all other relief, general or special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

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VINCE RYAN**

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