

No. D-1-GN-20-001042

<p>STATE OF TEXAS,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p>v.</p> <p>TPC GROUP, INC. and TPC GROUP LLC,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>§</p>	<p>IN THE DISTRICT COURT OF</p> <p style="text-align: center;">TRAVIS COUNTY, TEXAS</p> <p style="text-align: center;">250TH _____ JUDICIAL DISTRICT</p>
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**STATE OF TEXAS’S ORIGINAL PETITION AND
APPLICATION FOR INJUNCTIVE RELIEF**

The State of Texas, by and through its Attorney General, on behalf of the Texas Commission on Environmental Quality, files this Original Petition and Application for Injunctive Relief, seeking injunctive relief, civil penalties, attorney’s fees, and court costs for violations of the Texas Clean Air Act, the Federal Clean Air Act, the Texas Water Code, and rules and permits issued thereunder.

I. DISCOVERY

1.1 Plaintiff will conduct discovery under a Level 2 Discovery Control Plan pursuant to Tex. R. Civ. P. 190.3.

1.2 This case is not subject to the restrictions of expedited discovery under Tex. R. Civ. P. 169 because (1) the State seeks non-monetary injunctive relief and (2) the State’s claim for civil penalties exceeds \$100,000.

II. PARTIES

2.1 Plaintiff, the State of Texas (“State”), is authorized to bring this suit through its Attorney General at the request of the Texas Commission on Environmental Quality (“TCEQ”),

pursuant to Tex. Water Code §§ 7.032, 7.105. No filing fee or other security for costs is required of the State under Tex. Civ. Prac. & Rem. Code § 6.001.

2.2 Defendant TPC Group, Inc. is a foreign corporation organized under the laws of Delaware and authorized to do business in Texas. TPC Group, Inc. may be served through its registered agent, CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201, or wherever it may be found. Defendant TPC Group LLC, a subsidiary of TPC Group, Inc., is a Texas corporation. TPC Group LLC may be served through its registered agent, CT Corporation System, 1999 Bryan St., Ste. 900, Dallas, Texas 75201, or wherever it may be found. TPC Group, Inc. and TPC Group LLC will hereinafter be referred to collectively as “TPC Group.”

2.3 TPC Group is a “person” within the meaning of Section 382.003(10) of the Texas Health and Safety Code, Section 26.001(25) of the Texas Water Code, and Section 311.005(2) of the Texas Government Code.

III. JURISDICTION AND VENUE

3.1 This Court has jurisdiction over this case and the venue is proper in Travis County because this is an action to enforce Chapter 382 of the Texas Health and Safety Code, Chapter 26 of the Texas Water Code, and TCEQ rules promulgated thereunder. Tex. Water Code §§ 7.032, 7.105; Tex. Gov’t Code § 2001.202.

IV. NATURE OF SUIT AND AUTHORITY

4.1 This is a civil suit to enforce the Texas Clean Air Act, codified in Chapter 382 of the Texas Health and Safety Code; Chapter 26 of the Texas Water Code; and rules adopted by TCEQ pursuant to these statutes. This matter involves a butadiene and raffinate manufacturing plant owned and operated by TPC Group in the Port Neches, Texas area (the “Plant”). Multiple violations have occurred at the Plant since January 2018, including an explosion that resulted in

the release of multiple air contaminants without TCEQ authorization. This matter also involves unauthorized discharges of industrial waste. The State seeks injunctive relief, civil penalties, attorney's fees, and court costs.

Requirements under the Texas Clean Air Act and Federal Clean Air Act

4.2 It is the policy of the State to “safeguard the state’s air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and maintenance of adequate visibility.” Tex. Health & Safety Code § 382.002(a).

4.3 TCEQ has the duty and responsibility to administer the provisions of the Texas Clean Air Act, to establish the level of quality to be maintained in the State’s air, and to control the quality of the State’s air. Tex. Health & Safety Code § 382.011.

4.4 The Texas Clean Air Act provides that unless authorized by TCEQ, no person may “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).

4.5 A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of the Texas Clean Air Act or of any TCEQ rule or order. Tex. Health & Safety Code § 382.085(b).

4.6 An “air contaminant” includes “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).

4.7 “Air pollution” means “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(3).

4.8 The Texas Clean Air Act confers jurisdiction on TCEQ to adopt rules regulating the management of atmospheric emissions of air contaminants. Tex. Health & Safety Code § 382.017. The Texas Clean Air Act also confers jurisdiction on TCEQ to issue permits to facilities that emit air contaminants and to establish and enforce permit conditions within each permit. Tex. Health & Safety Code §§ 382.051, 382.0513; 30 Tex. Admin. Code § 116.115.

4.9 Holders of permits “shall comply with all special conditions contained in the permit document.” 30 Tex. Admin. Code § 116.115(c).

4.10 “New Source Review Permit” refers to TCEQ permits issued pursuant to 30 Tex. Admin. Code chapter 116 for new or modified sources of air emissions at a site.

4.11 An “emissions event” means an “upset event, or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in the unauthorized emissions of air contaminants from one or more emissions points at a regulated entity.” Tex. Health & Safety Code § 382.0215(a)(1); 30 Tex. Admin. Code § 101.1(28).

4.12 An “upset event” is an “unplanned and unavoidable breakdown or excursion of a process or operation that results in unauthorized emissions.” 30 Tex. Admin. Code § 101.1(110).

4.13 An “unauthorized emission” includes the emission of any air contaminant that exceeds any air emission limitation in a TCEQ permit, rule, or order.

30 Tex. Admin. Code § 101.1(108). Therefore, all “emissions events” are unauthorized because the emissions events exceed air emission limitations in a permit, rule, and/or order of TCEQ. *Id.*

4.14 The total emissions of air contaminants from any of the sources of emissions covered by a new source review permit must not exceed the values stated on the table attached to the permit entitled “Emission Sources--Maximum Allowable Emission Rates.” *Id.* at § 116.115(b)(2)(F). Emissions that exceed the maximum allowable emission rates are not authorized and are violations of the permit. *Id.*

4.15 Owners and operators of a regulated entity experiencing an emissions event must create a final record of all reportable and non-reportable emissions events no later than two weeks after the end of the emissions event, including an estimated total of air contaminants emitted. 30 Tex. Admin. Code § 101.201(b).

4.16 Texas is authorized to issue and enforce federal operating permits under Title V of the Federal Clean Air Act. 30 Tex. Admin. Code, Chapter 122 (approved at 66 Fed. Reg. 63,318 (Dec. 6, 2001)). Pursuant to Section 382.054 of the Texas Health and Safety Code, a person may not operate a federal source unless the person has obtained a federal operating permit from TCEQ under Sections 382.0541, 382.0542, or 382.0543 of the Texas Health and Safety Code.

4.17 Any person owning or operating a source of air contaminants shall comply with: (1) any applicable new source performance standards promulgated by the Environmental Protection Agency (“EPA”) pursuant to Section 111 of the Federal Clean Air Act; (2) any applicable emissions standards for hazardous air pollutants promulgated by the EPA pursuant to Section 112 of the Federal Clean Air Act; and (3) the conditions of any permit issued by the EPA pursuant to 40 C.F.R § 52.21, concerning the prevention of significant deterioration of air quality. 30 Tex. Admin. Code § 101.20.

4.18 Title V permit holders “shall comply with all terms and conditions codified in the permit and any provisional terms and conditions required to be included with the permit.” 30 Tex. Admin. Code § 122.143(4). Noncompliance with the terms or conditions codified in the permit constitutes a violation of the Federal Clean Air Act and the Texas Clean Air Act and is grounds for enforcement. *Id.*

4.19 Title V permit holders must certify compliance for at least each 12-month period following initial permit issuance and must submit the compliance certification to the executive director of the TCEQ within 30 days of any certification period. 30 Tex. Admin. Code § 122.146.

4.20 The Texas Clean Air Act confers jurisdiction on TCEQ to adopt rules regulating the outdoor burning of waste. Tex. Health & Safety Code § 382.018. Pursuant to its authority under the Texas Clean Air Act, TCEQ adopted 30 Tex. Admin Code chapter 111 to prohibit unauthorized outdoor burning. Under 30 Tex. Admin. Code § 111.201, a person may not cause, suffer, allow, or permit any unauthorized outdoor burning within the State of Texas.

4.21 Under 30 Tex. Admin. Code § 101.4, no person shall discharge air contaminants in such concentration and of such duration that are injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or interfere with the normal use and enjoyment of animal life, vegetation, or property.

4.22 Under 30 Tex. Admin. Code § 111.111(a), no person may cause, suffer, allow, or permit visible emissions from any source unless authorized by the Texas Clean Air Act or TCEQ rule, permit, or order.

Texas Water Code

4.23 It is the policy of the State to maintain the quality of water in the state consistent with the public health and enjoyment. Tex. Water Code § 26.003. Chapter 26 of the Texas Water

Code confers jurisdiction on TCEQ to administer the provisions of chapter 26 and establish the level of quality to be maintained in, and control the quality of, the water in the state. Tex. Water Code § 26.011.

4.24 Except as authorized by TCEQ, no person may (1) discharge municipal, recreational, agricultural, or 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 pollution of any of the water in the state; 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. Tex. Water Code § 26.121(a).

4.25 To discharge means to “deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit or suffer any of these acts or omissions.” Tex. Water Code § 26.001(20).

4.26 “Water” or “water in the state” means “groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, 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.” Tex. Water Code § 26.001(5).

4.27 “Industrial waste” means “waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.” Tex. Water Code § 26.001(11).

Enforcement Authority

4.28 No person may cause, suffer, allow, or permit any activity in violation of the Texas Clean Air Act, the Texas Water Code, or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

4.29 A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit under TCEQ's jurisdiction shall be assessed a civil penalty of not less than \$50 nor more than \$25,000 for each violation. Tex. Water Code § 7.102. Each day of continuing violation is a separate violation. Tex. Water Code § 7.102.

4.30 The Attorney General, at the request of TCEQ, may bring an action for injunctive relief and civil penalties if it appears that a violation or threat of a violation of a statute within TCEQ's jurisdiction, or a rule adopted or an order or a permit issued under such a statute, has occurred or is about to occur. Tex. Water Code §§ 7.032, 7.105.

V. BACKGROUND

5.1 The Plant is a chemical manufacturing facility located at 2102 Spur 136, Port Neches, Jefferson County, Texas owned and operated by TPC Group. The Plant produces butadiene and raffinate. TPC Group operates the Plant under several permits issued by TCEQ in accordance with federal and state Clean Air Acts and the Texas Water Code, including Title V Operating Permit No. O-1327; New Source Review Permit No. 20485; Texas Pollutant Discharge Permit No. WQ0004840000; Stormwater Permit No. TXR05CT39; and several Permit-by-Rule registrations (collectively, the "Permits").

5.2 For several years, the Plant has experienced compliance issues associated with operator errors and equipment malfunctions, resulting in emissions events that caused the release

of unauthorized air contaminants into the environment. Between 2014 and 2018, TCEQ entered seven administrative orders against TPC Group for violations relating to emissions of air contaminants and other violations.¹

5.3 Despite the administrative enforcement actions taken by TCEQ against TPC Group for past violations, TPC Group's poor operational, maintenance, and design practices continue to cause emissions events and unauthorized emissions of air contaminants from the Plant into the environment.

5.4 On January 22, 2018; April 13, 2018; April 15, 2018; May 21, 2018; September 11, 2018; August 29, 2018; May 10, 2019; and September 27, 2019, the Plant experienced unauthorized air emissions events that could have been prevented through better design and/or better operational and maintenance practices. The Plant also failed to timely submit a permit compliance certification and failed to identify the estimated total quantities of a reportable emissions event, as required under law.

5.5 On November 27, 2019, an explosion occurred at a processing unit within the Plant. A secondary explosion followed, and a series of fires caused by the explosions erupted at the unit and continued to emit contaminants into the air. As of the date of this Petition, the emissions are continuing.

5.6 The fire produced a thick, black cloud of smoke that was visible for miles. As a result of the fire, mandatory evacuations were ordered for residents within a four-mile radius from the Plant, and voluntary orders to shelter in place were issued for residents in the surrounding area.

¹ The orders include: Agreed Order, Docket No. 2017-0911-AIR-E (June 5, 2018); Agreed Order, Docket No. 2016-1610-MLM-E (Jul. 27, 2017); Agreed Order, Docket No. 2016-0298-AIR-E (Jul. 12, 2016); Agreed Order, Docket NO. 2015-1261-AIR-E (Mar. 4, 2016); Agreed Order, Docket No. 2014-1301-AIR-E (Aug. 10, 2015); Agreed Order, Docket No. 2014-0687-AIR-E (Oct. 18, 2014); Agreed Order, Docket No. 2013-1377-AIR-E (June 13, 2014).

5.7 For the duration of the fire at the Plant, firefighting water and chemicals in the form of foam were applied to extinguish the fire.

5.8 Beginning on November 27, 2019 and intermittently until December 16, 2019, the resulting discharges bypassed the joint wastewater treatment plant, causing a significant volume of industrial waste to be discharged through Outfall 201 into an unnamed ditch, then into Star Lake Canal (Segment 0601A), and then into the Neches River Tidal (Segment 0601).

5.9 The discharge resulted in a documented serious impact to the environment, evidenced by a visible sheen, degraded water quality, and significant impact to wildlife documented in Star Lake Canal. TCEQ investigators documented approximately 2,196 dead fish and 51 dead crabs.

VI. CLAIM 1 – CIVIL PENALTIES FOR VIOLATIONS OF STATE STATUTES, TCEQ RULES, AND PERMITS

Unauthorized Air Emissions at the Plant

6.1 Under Tex. Health & Safety Code § 382.085(a), except as authorized by TCEQ, no person may 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. Moreover, under Tex. Health & Safety Code § 382.085(b), no person may cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of the Texas Clean Air Act or of any TCEQ rule or order. Furthermore, no person may cause, suffer, allow, or permit any activity in violation of the Texas Clean Air Act or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

6.2 On January 22, 2018, the Plant released 101.9 pounds (“lbs.”) of 1,3-butadiene, 136.40 lbs. of volatile organic compounds (“VOC”), 5.29 lbs. of carbon monoxide (“CO”), and 12.89 lbs. of nitrogen oxides (“NOx”) from the North Flare, Emissions Point Number (“EPN”)

UWN6R1, during an emissions event that lasted 17 minutes. According to information provided by TPC Group, the event occurred due to an over-pressurization during the Plant startup, resulting in flaring. The emissions event and associated air contaminants are not authorized by TPC Group's Permits or any TCEQ rule or order.

6.3 On April 13, 2018, the Plant released 6,493.46 lbs. of 1,3-butadiene, 16,245.32 lbs. of VOC, 164.8 lbs. of CO, and 35.54 lbs. of NO_x and experienced 100 percent opacity from the North/South Flare, EPNs UWN6R1 and UWS6R1 during an emissions event that lasted 18 hours. According to information provided by TPC Group, the event occurred when high winds broke jumpers on the outer loop circuit connecting to the transformers and severed power to the Plant, resulting in flaring. The emissions event and associated air contaminants are not authorized by TPC Group's Permits or any TCEQ rule or order.

6.4 On April 15, 2018, the Plant released 54.45 lbs. of VOC from the S4G16 Reflux Pump during an emissions event that lasted two minutes. According to information provided by TPC Group, the emissions event occurred because the S4G16 Reflux Pump was restarted with the plug installed instead of the seal flush piping, causing the plug to blow out, resulting in venting to the atmosphere. The emissions event and associated air contaminants are not authorized by TPC Group's Permits or any TCEQ rule or order.

6.5 On May 21, 2018, the Plant released 113.52 lbs. of 1,3-butadiene and 123.92 lbs. of VOC from the North/South Flare, EPNs UWN6R1 and UWSR1, during an emissions event that lasted 45 minutes. According to information provided by TPC Group, the event occurred because proper procedures were not followed in the startup of the S2D1 Methyl Acetylene Removal tower, causing the pressure release valve to lift due to excessive pressure, resulting in flaring. The

emissions event and associated air contaminants are not authorized by TPC Group's Permits or any TCEQ rule or order.

6.6 On September 11, 2018, the Plant released 64.26 lbs. of 1,3-butadiene and 110.79 lbs. of VOC from the C4 Plant's Washer Tower during an emissions event that lasted 15 minutes. According to information provided by TPC Group, the event occurred due to a failure of a valve at the pipe rack of the steam header, which resulted in a loss of primary containment and resulted in venting to the atmosphere. The emissions event and associated air contaminants are not authorized by TPC Group's Permits or any TCEQ rule or order.

6.7 On August 29, 2018, the Plant released 442.33 lbs. of 1,3-butadiene and 547.43 lbs. of VOC from the Cooling Tower, EPN WWCT1-6, during an emissions event that lasted six hours and fifty minutes. According to information provided by TPC Group, the emissions event occurred due to a leak in the S4E10E/F Exchanger, which resulted in venting to the atmosphere. The emissions event and associated air contaminants are not authorized by TPC Group's Permits or any TCEQ rule or order.

6.8 On May 10, 2019, the Plant released 139 lbs. of 1,3-butadiene and 348 lbs. of VOCs from the North/South Flare, EPN UWN6R1/UWS6R1, during an emissions event that lasted two hours and forty minutes. According to information provided by TPC Group, the emissions event occurred when the pilot flame of EPN UWN6R1 was extinguished due to rain and winds and could not be reignited because the piping to the pilots from the flame front generator was full of water. The pilot's gas pressure should have been set at 30 pounds per square inch but was instead 20 pounds per square inch. Because of the insufficient natural gas pressure, operators were not able to relight the pilot until two hours and forty minutes later. The emissions event and associated air contaminants are not authorized by TPC Group's Permits or any TCEQ rule or order.

6.9 On September 27, 2019 at approximately 5:00 PM, the Plant released 249 lbs. of 1,3-butadiene from EPN C4FUG during an emissions event that lasted twenty minutes. The emissions event occurred when a threaded connection to a drain valve on a butadiene line broke due to fatigue. The emissions event and associated air contaminants are not authorized by TPC Group's Permits or any TCEQ rule or order.

6.10 On November 27, 2019 at approximately 1:00 AM, an explosion occurred at the Plant. A secondary explosion occurred at approximately 1:45 PM. A mandatory evacuation was issued for residents within a four-mile radius of the Plant after the second blast. At least three workers sustained injuries related to the blast and multiple residents were treated for injuries related to shattered glass. The Plant emitted several air contaminants, including 1,3-butadiene and VOC. These incidents constitute an emissions event that is ongoing as of the date of this petition. This emissions event and the associated air contaminants are not authorized by TPC Group's Permits or any TCEQ rule or order.

6.11 Therefore, TPC Group caused, suffered, allowed, or permitted the emission of air contaminants from the Plant in violation of Tex. Health & Safety Code § 382.085(a) and (b), and Tex. Water Code § 7.101 on January 22, 2018; April 13, 2018; April 15, 2018; May 21, 2018; September 11, 2018; August 29, 2018; May 10, 2019; September 27, 2019; and on each day from November 27, 2019, until the emissions event ceases. Each air contaminant emitted, each separate emission point, and each day on which such emissions occurred constitute separate violations.

6.12 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against TPC Group within the statutory range of not less than \$50 nor greater than \$25,000 for each day of each violation alleged in Paragraph 6.11 of this Petition.

Reporting Violation

6.13 Under 30 Tex. Admin. Code § 101.201, owners and operators of a regulated entity experiencing an emissions event must create a final record of all reportable and non-reportable emissions events no later than two weeks after the end of the emissions event, including an estimated total of air contaminants emitted. 30 Tex. Admin. Code § 101.201(b).

6.14 TPC Group failed to correctly report the estimated total for 1,3-butadiene, VOC, CO, and NO_x released during its April 13, 2018 emissions event.

6.15 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against TPC Group within the statutory range of not less than \$50 nor greater than \$25,000 for each day of each violation alleged in Paragraph 6.14 of this Petition.

Permit Compliance Certification Violation

6.16 Pursuant to 30 Tex. Admin. Code § 122.146, Title V permit holders must certify compliance for at least each 12-month period following initial permit issuance and must submit the compliance certification to the executive director of the TCEQ within 30 days of any certification period.

6.17 The Plant's permit compliance certification for the January 1, 2017 through December 31, 2017 certification period was due by January 30, 2018, but was not submitted until July 23, 2018. Therefore, TPC Group failed to submit a permit compliance certification within 30 days after the end of the certification period.

6.18 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against TPC Group within the statutory range of not less than \$50 nor greater than \$25,000 for each day of each violation alleged in Paragraph 6.17 of this Petition.

Unauthorized Outdoor Burning at the Plant

6.19 Under 30 Tex. Admin. Code § 111.201, a person may not cause, suffer, allow, or permit any unauthorized outdoor burning within the State of Texas. No person may cause, suffer, allow, or permit any activity in violation of the Texas Clean Air Act or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

6.20 On November 27, 2019, multiple explosions occurred at the Plant and several fires resulted. This burning was not authorized by the Texas Clean Air Act, TPC Group's Permits, or any TCEQ rule or order.

6.21 Therefore, TPC Group caused, suffered, allowed, or permitted outdoor burning at the Plant in violation of 30 Tex. Admin. Code § 111.201 and Tex. Water Code § 7.101 each day from November 27, 2019, until the burning ceased on January 4, 2020.

6.22 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against TPC Group within the statutory range of not less than \$50 nor greater than \$25,000 for each day of the violation alleged in Paragraph 6.21 of this Petition.

Nuisance

6.23 Under 30 Tex. Admin. Code § 101.4, no person shall discharge air contaminants in such concentration and of such duration that are injurious to or adversely affect human health or welfare, animal life, vegetation, or property, or interfere with the normal use and enjoyment of animal life, vegetation, or property. No person may cause, suffer, allow, or permit any activity in violation of the Texas Clean Air Act or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

6.24 Inhalation of 1,3-butadiene can cause irritation of the nose, eyes, mouth and throat, and exposure in high concentrations causing nausea, blurred vision, fatigue, coma, and death. As

a result of the fire, Jefferson County issued an evacuation order for residents within a four-mile radius and an order to shelter-in-place for other residents in the area. The evacuation order and shelter-in-place order were lifted on December 5, 2019.

6.25 Therefore, TPC Group caused, suffered, allowed, or permitted a nuisance at the Plant in violation of 30 Tex. Admin. Code § 101.4 and Tex. Water Code § 7.101, from at least November 27, 2019 to December 5, 2019.

6.26 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against TPC Group within the statutory range of not less than \$50 nor greater than \$25,000 for each day of violation alleged in Paragraph 6.25 of this Petition.

Unauthorized Visible Emissions

6.27 Under 30 Tex. Admin. Code § 111.111(a), no person may cause, suffer, allow, or permit visible emissions from any source unless authorized by the Texas Clean Air Act or TCEQ rule, permit, or order. No person may cause, suffer, allow, or permit any activity in violation of the Texas Clean Air Act or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

6.28 The first explosion at the Plant occurred on November 27, 2019, and created a large, dark emissions plume. The plume was visible miles away from the Plant. The visible emissions from the fire are not authorized by the Texas Clean Air Act, TPC Group's Permits, or any TCEQ rule or order.

6.29 Therefore, TPC Group caused, suffered, allowed, or permitted unauthorized visible emissions at the Plant in violation of 30 Tex. Admin. Code § 111.111 and Tex. Water Code § 7.101, each day from November 27, 2019, until all visible emissions related to the fire ceased on January 4, 2020.

6.30 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against TPC Group within the statutory range of not less than \$50 nor greater than \$25,000 for each day of violation alleged in Paragraph 6.29 of this Petition.

Unauthorized Discharge of Industrial Waste

6.31 Under section 26.121(a) of the Texas Water Code, except as authorized by TCEQ, no person may: (1) discharge municipal, recreational, agricultural, or 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 may cause pollution of the water; 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. To discharge means to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit or suffer any of these acts or omissions. Tex. Water Code § 26.001(20). No person may cause, suffer, allow, or permit any activity in violation of the Texas Water Code or any TCEQ permit, rule, or order. Tex. Water Code § 7.101.

6.32 On November 27, 2019, discharges from firefighting activities involving contaminated water and chemicals bypassed the joint wastewater treatment plant and discharged through Outfall 201 into an unnamed ditch, then into Star Lake Canal (Segment 0601A), and then into the Neches River Tidal (Segment 0601), which are waters of the state.

6.33 The wastewater discharges from the Plant are not authorized by the Texas Water Code, TPC Group's Permits, or any TCEQ rule or order. In addition, the discharges resulted in a serious impact to the environment, evidenced by a visible sheen and degraded water quality, and impacts to wildlife in Star Lake Canal, including at least 2,196 dead fish and 51 dead crabs.

6.33 Therefore, TPC Group has caused, suffered, allowed, or permitted the discharge of wastewater in the waters of the state in violation of Texas Water Code Sections 26.121 and 7.101, from November 27, 2019 until discharges ceased on December 16, 2019.

6.34 Pursuant to Tex. Water Code § 7.102, the State is entitled to civil penalties against TPC Group within the statutory range of not less than \$50 nor greater than \$25,000 for each day of the violation alleged in Paragraph 6.33 of this Petition.

VII. CLAIM 2 - INJUNCTIVE RELIEF

7.1 The Attorney General may commence an action in the name of the State and on behalf of TCEQ to enjoin a violation or threatened violation of any “statute within the commission’s jurisdiction or a rule adopted or an order or a permit issued under such a statute.” Tex. Water Code §§ 7.032(b), 7.105.

7.2 As alleged above, TPC Group has violated and continues to violate the Texas Water Code, the Texas Clean Air Act, TPC Group’s Permits, and regulations promulgated by TCEQ as alleged in Section VI above. TPC Group is obligated to comply with the law and may be enjoined by either a mandatory or prohibitory injunction.

7.3 No bond is required of the State prior to granting of an injunction as set forth in Tex. Water Code § 7.032(d).

7.4 The State requests a temporary injunction ordering TPC Group, its officers, agents, servants, employees, attorneys, and all other persons acting in concert or participation with it, on its behalf, or under its control, whether directly or indirectly, to carry out the following:

A. Words and Terms

1. “Defendant” or “TPC Group” means TPC Group LLC and TPC Group, Inc., their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them.

2. “Effective Date” means the date TPC Group is served with this Injunction.
3. “Emissions Event” means any upset event or unscheduled maintenance, startup, or shutdown activity, from a common cause that results in unauthorized emissions of air contaminants from one or more emissions points as set forth at 30 Tex. Admin. Code § 101.1(28).
4. “Plant” means the chemical manufacturing facility located at 2102 Spur 136, Port Neches, Jefferson County, Texas owned and operated by TPC Group.
5. “TCEQ” means the Texas Commission on Environmental Quality and its predecessor and successor agencies.
6. “Audit” or “Environmental Audit” means an audit of the Plant conducted by a third-party auditor approved by the TCEQ.

B. Ordering Provisions

1. No later than thirty (30) calendar days after the Effective Date, TPC Group shall engage an independent third-party auditor approved by the TCEQ to conduct an Environmental Audit of the Plant.
 - i. The Environmental Audit shall address the root cause(s) of the Emissions Events that occurred at the Plant on January 22, 2018; April 13, 2018; April 15, 2018; May 21, 2018; September 11, 2018; August 29, 2018; May 10, 2019; September 27, 2019; and beginning on November 27, 2019; including any relevant operating and maintenance practices and equipment design issues.
 - ii. The Audit shall be completed no later than sixty (180) calendar days after the Effective Date.
 - iii. No later than thirty (30) calendar days of completion of the Environmental Audit, TPC Group shall submit a copy of the Audit report and any supporting documentation to TCEQ, along with a list of actions TPC Group will undertake to address the Audit findings and an estimated date of completion for each item.
 - iv. Any actions undertaken to address the Audit findings must be completed no later than December 1, 2021.
 - v. No later than fifteen (15) calendar days after completing the actions related to the Audit findings, TPC Group shall submit written certification to the TCEQ demonstrating completion.
2. TPC Group shall address each plan, report, submittal, specification, notice, and other document required to be submitted by this Injunction to: Regional Director, Beaumont Regional Office, Texas Commission on Environmental Quality, 3870 Eastex Fwy, Beaumont, Texas 77703-1830; *with copies to:* Carl Myers and Katie Hobson, Office of

the Attorney General, Environmental Protection Division, (AG#CX6269167182), P.O. Box 12548 (MC-066), Austin, Texas 78711-2548.

7.5 The State also requests all permanent injunctive relief to which it may show itself entitled at time of trial.

VIII. ATTORNEY'S FEES AND COSTS

8.1 This is an action brought by the State to recover civil penalties and for injunctive relief. Therefore, as set forth in Tex. Water Code § 7.108, the Attorney General is entitled to recover and collect reasonable attorney's fees, investigative costs, and court costs incurred in relation to this proceeding on behalf of the State. In the event of an appeal to the Court of Appeals or to the Supreme Court, the Attorney General is entitled to recover and collect its additional reasonable attorney's fees and court costs on behalf of the State.

IX. POST-JUDGMENT INTEREST

9.1 Pursuant to Tex. Fin. Code § 304.003, the State asks this Court to award the State post-judgment interest on all amounts awarded in relation to this proceeding, at the maximum rate allowed by law.

PRAYER

The State of Texas requests the following:

- 1.** That citation be issued for Defendants TPC Group, Inc. and TPC Group LLC to appear and answer;
- 2.** That upon trial, the Court grant a temporary injunction against Defendants TPC Group, Inc. and TPC Group LLC, as requested above;
- 3.** That the Court grant judgment against Defendants TPC Group, Inc. and TPC Group LLC for appropriate civil penalties within the range allowed by law;
- 4.** That the Court award the State its reasonable attorney's fees, court costs, and reasonable investigative costs in this action;

5. That the Court award the State post-judgment interest on all amounts awarded in this suit until fully paid;
6. That the Court award the State all such other relief, general and special, at law and in equity, to which it may show itself justly entitled.

Respectfully submitted,

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Attorney General of Texas

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First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

PRISCILLA M. HUBENAK
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/s/ Carl.

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