Filed 12 August 15 P4:25
Chris Daniel - District Clerk
Harris County
ED101J017027046
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No. 2011-76724

Harris County, Texas, *Plaintiff,*	§	IN THE DISTRICT COURT OF
	§	
The State of Texas, acting by and through the Texas Commission on Environmental Quality, *A Necessary and Indispensible Party*	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
International Paper Company, McGinnes Industrial Maintenance Corporation, Waste Management, Inc. and Waste Management of Texas, Inc.	§	
	§	
Defendants	§	295th JUDICIAL DISTRICT

PLAINTIFF HARRIS COUNTY'S
FIRST AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Harris County, Texas ("Harris County") files this First Amended Petition and in support thereof, Harris County would show this Court as follows:

I. Introduction

1. The citizens of Harris County no longer feel secure while swimming in the San Jacinto River. The citizens of Harris County no longer trust that the fish they catch from the San Jacinto River are safe to eat. The citizens of Harris County can no longer enjoy camping, picnicking or eating fish or blue crabs in the San Jacinto River free from fear. As a result of Defendants' actions, inactions, and silence in connection with the San Jacinto waste pits, the people of Harris County have been unknowingly exposed to the harmful effects of dioxin – and to seafood contaminated with that dioxin – widely regarded as the most toxic chemical ever made by man.

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2. The harm to Harris County and its residents is the direct result of the actions and inactions of Waste Management, Inc. ("Waste Management"), Waste Management of Texas, Inc. ("Waste Management of Texas"), McGinnes Industrial Maintenance Corporation ("MIMC") and International Paper Company ("International Paper") in causing, allowing and permitting the releases of dioxin waste, toxic "black liquor" and other wastes and pollutants disposed in pits by the river, and the conscious and intentional abandonment of the waste and pollutants into the environment and food chain being consumed by the people of Harris County. Unbelievably, the responsible companies purposefully walked away from their poisonous waste without a backward glance and remained silent for decades – content to let it become someone else's problem. And it did. It became the problem of the people of Harris County, everyone who used the river for recreation, swam and fished in the San Jacinto River, and every man, woman or child who ate seafood from the river that contained dioxin from the San Jacinto pits.

3. The corporate officials of Defendants do not live near the waste site that they created or are responsible for – nor do they need to fish for food from the waters that they allowed to be polluted in order to feed their families. Those companies responsible for the dioxin were content to say nothing about the poisonous legacy left behind to release silently into the environment because they were not affected by it. But the Harris County residents who do live there are affected by it. On their own, however, they are among the least able to obtain justice and hold those responsible for the dioxin accountable. To do so, they need help. The citizens have asked Harris County to stand

up and help them, and Harris County has filed this lawsuit on behalf of its citizens who have been the unknowing victims of an insidious public health threat.

4. Harris County has embraced industry to build this great city in which we all live. Harris County is proud to be the center of the largest petrochemical complex in the entire United States. It is proud of the role this industry played in building the nation's economy, proud of the fuels and products produced by the Houston petrochemical and other industries, proud of the men and women who work in those industries, and proud of the responsible companies that bring jobs to the County. It is also a recognized reality that because of the concentration of the petrochemical industry and other plants along the waterways in Harris County, it is even more important for companies in the community to act responsibly and to warn, not remain silent, about dangers that may or have been created in the course of industrial operations. As much goodwill and economic benefit as industry contributes to the County, industries that do not act as responsible environmental stewards for the communities in which they operate create the opposite effect, damaging the public's support for industry and impeding further economic development and opportunities for its residents.

5. In the case of the San Jacinto waste pits, Harris County and its citizens have been harmed. At a time when Harris County has been forced to reduce budgets and benefits or lay off constables, sheriff deputies, and other workers important to the protection of the citizens, it has had to devote taxpayer resources to address the legacy of dioxin contamination left by the companies responsible for the San Jacinto waste pits. The County has had to spend resources investigating, addressing and taking steps to protect its citizens in connection with this public health threat, while jobs and economic

opportunities for development in County precincts are harmed by the presence of toxic waste pits in the midst of the community. Many residents fear living, working and recreating in Harris County because of the presence of such danger.

6. The U.S. Department of Health and Human Services has determined that 2,3,7,8-Tetrachlorodibenzo-p-dioxin (referred to as 2,3,7,8-TCDD, which is the type of dioxin Defendants caused and allowed to be released into the San Jacinto River) may reasonably be anticipated to cause cancer, and the World Health Organization has determined that 2,3,7,8-TCDD is a human carcinogen. In humans, the most common health effect from 2,3,7,8-TCDD is chloracne, a severe skin disease, with studies also showing that the dioxin may cause changes to blood and urine that may indicate liver damage, alter glucose metabolism, and change hormone levels. In certain animal species, 2,3,7,8-TCDD is especially harmful and can cause death after a single exposure, in addition to immune system disorders, liver damage, reproductive damage, and birth defects in animals. Ecological health from the dioxin in the San Jacinto River is documented as being threatened at every level of the food chain. Because of these health risks, the State of Texas has issued a consumption advisory for crab and all species of fish from the San Jacinto River Site area, warning women who are nursing, pregnant or who may become pregnant and children under 12 not to consume any fish or blue crab from the area. All others are advised to consume no more than 8 ounces of certain fish within any given month. Adults and children are also advised to avoid the risk of exposure through skin contact by not camping, fishing or picnicking near the San Jacinto River area.

7. Because of the impacts to the residents of Harris County, the Harris County Commissioners Court has unanimously voted to authorize this lawsuit, finding that since the 1960s, this most toxic form of dioxin has been continuously released into the environment from the Site, leaving Harris County and the public to deal with it, and that the County should be compensated for the damage caused by the pollution and to ensure a continuing climate of environmental compliance and responsibility.

8. Section II of this First Amended Petition explains the reasons why Harris County has brought this lawsuit against the Defendants responsible for causing and allowing the harm to the residents and the poisoning of the San Jacinto River.[1] Section III provides a chronology and timeline of Defendants' actions and inactions that have caused, permitted and allowed dioxin to be released to the San Jacinto River and exposed the men, women, children and unborn children of Harris County to harm. Section IV identifies the parties and Section V provides a discussion of the various laws that Defendants have violated. Section VI sets forth the various causes of action applicable to each Defendant.

II. Defendants Leave a Legacy of Dioxin to the People of Harris County.

A. Evidence shows that the dioxin in the River was not an accident.

9. As Harris County has now discovered, the presence of poisonous waste in the community was not an accident. On the contrary, the placement of the waste in pits

[1] Defendants have demanded that the Court order Plaintiff Harris County to file an Amended Petition to provide more information regarding Harris County's specific claims against them. Defendants have claimed that they were unable to determine why they were being sued, why they should be subject to civil penalties, and they professed ignorance of any harm that they had caused the people of Harris County. As one of their attorneys stated in Court: "There is absolutely no way to understand from their current petition who is liable for what, what the allegations are as a particular company, . . . what they caused, suffered or allowed." Defendants asked the Court to order Harris County to replead; Harris County agreed, and the Court so ordered. This First Amended Petition responds to Defendants' claimed ignorance of their wrongful conduct.

jutting into the San Jacinto River was intentional and the abandonment of the deteriorating and leaking dioxin waste pits was purposeful and intentional. Evidence being uncovered shows that the corporate entities responsible for the dioxin knowingly and intentionally **meant** to simply walk away from the poisonous waste they generated, despite the far-reaching and foreseeable consequences to the men, women and children of Harris County. In essence, these entities "caused, suffered, allowed and permitted" the waste to be released into the waters of the State on a daily basis. In fact, internal documents long in the possession of Defendants MIMC and Waste Management of Texas reveal that the MIMC Board of Directors responsible for the dioxin pits deliberately called a "Special Meeting" to address the poor physical condition of their "worthless" waste pits and to vote to abandon them as dump sites.[2]

10. Disturbingly, these internal documents from MIMC and Waste Management of Texas also show that when the MIMC Board of Directors in control intentionally voted to abandon their pits full of dioxin waste, they voted at the same time to reward themselves with huge bonuses.[3] See Exhibit A. The corporate priorities were strikingly clear – "abandon" the toxic waste pits with no further action or attention – and quickly distribute the company's money to the corporate executives. As one of the MIMC Board members later admitted in connection with the investigation of the widespread pollution from the San Jacinto Waste Pits, "...Mr. McGinnes, he was a pro at

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[2] Defendants have refused to produce any of their historical documents to Harris County despite the County's numerous requests. While Defendants continue to withhold all evidence in their possession from the County, the historical documents that are publicly available paint a disturbing picture and show why the statutory penalty provisions are appropriate in this case.

[3] August 19, 1968 Minutes of Special Meeting of the Board of Directors of McGinnes Industrial Maintenance Corporation (MIMC) – now a Waste Management Company. By today's standards, the bonus amounts the Directors voted to themselves would amount to hundreds of thousands of dollars. In addition to abandoning the waste pits and granting themselves bonuses, the MIMC Board of Directors admitted that they had not set forth or adequately reserved for the liabilities associated with their waste disposal activities on the San Jacinto River in the Company's Audited Financial Statements.

making money."[4] The people of Harris County do not think it is acceptable for the companies responsible for the dioxin to reward themselves financially for their misdeeds, devise and execute a plan to wash their hands of their pollution, and allow it to wash instead into Harris County's waterways to become the responsibility of the taxpayers and a danger to the community.

11. As Harris County learns more about Defendants' actions and inaction in connection with the San Jacinto waste pits, the enormity of the consequences of their decisions to **intentionally and consciously** abandon their poisonous waste and to subsequently remain silent about what they knew becomes apparent. Because of Defendants' actions and inactions, they have left the dioxin they created and decided to store in waste ponds they operated or controlled to freely release to the environment and contaminate the food consumed by the unknowing citizens of Harris County. The evidence shows that when the State and County sought information that was already known to Defendants and contained in their own corporate records, they did not disclose the information that they knew or take any action to stem the tide of further human exposure to the dioxin they had intentionally left behind Instead, those corporations benefited financially from simply walking away and leaving the dioxin to release silently into the waters of the San Jacinto River, poisoning it and the marine life being fished by recreational, commercial and other fisherman for public consumption.

12. While the corporate entities benefited and parlayed their businesses into ever-larger and more profitable corporate entities, their waste materials continued to release silently into the environment exposing people to risk from the dioxin that became

[4] Statement of MIMC Corporate Officer George Lowrey.

more widespread throughout the San Jacinto River, the Upper and Lower Galveston Bay and increasingly distributed throughout the food chain for more than 40 years.

B. Government officials discover "astronomical" and unexplainable amounts of dioxin in the San Jacinto River.

13. Eventually, officials from the State of Texas began to uncover clues of the hidden corporate legacy left by the corporations, although it would be many years before they could put together all the pieces of the puzzle and identify those responsible for the ever-growing public health threat to the unsuspecting populace that released and spread beneath the waters of the San Jacinto River. Although Defendants knew of the existence of the dioxin pits in the San Jacinto River, State officials were mystified to discover what they described as "astronomical" and unexplainable amounts of dioxin in the San Jacinto River.

14. Years went by as the state and local governments continued to search in vain to try to find the source of the dioxin so that they could protect the citizens from this public health threat. Unfortunately for the citizens of Harris County, the corporations with information about the massive quantities of dioxin that had been placed in pits in the San Jacinto River kept silent. They did nothing to warn the public or act to stop the dangerous pollution they caused. Because of their actions and inactions, the people of Harris County could not take steps to protect themselves, their children and their unborn children from dioxin exposure. Ultimately, the corporations responsible for the dioxin pits in the San Jacinto River were identified by the authorities, but it was too late for the residents of Harris County who had been recreating in the river and eating dioxin-contaminated seafood for decades.

C. While Government Officials continue to search for the source of the dioxin, Defendants continue their conspiracy of silence.

15. Defendants had the knowledge, information, power, money and ability to take steps to stop the dioxin releases into the San Jacinto River and to warn the Harris County residents of the harm they were facing. Instead, they decided to remain silent. By the time that Harris County, state agencies and area public officials finally figured out the information that Defendants possessed and kept to themselves, it was already too late to warn the citizens who, for many years, had unwittingly eaten the fish and crabs from the river, who had unknowingly sent their children swimming in poisonous waters, and who did not know of the threat to the local food chain and threats to public health from Defendants' dioxin. The innocent Harris County residents and visitors could not protect themselves and their families because they just did not know. But the Defendants responsible for the poisonous legacy in the San Jacinto River and the companies that they later merged with knew about it. They just chose not to tell anyone.

MIMC continues its silence to the detriment of the people of Harris County.

16. Defendant MIMC remained silent in 1968 when it abandoned the pits and its responsibilities to the people of Harris County. It remained silent throughout the 70s, 80s, 90s, and in the years after the turn of the century even as it continued to represent to the public that it was a responsible corporate citizen that should be awarded permits to operate still other hazardous waste pits downstream of the one it had intentionally abandoned years before. It remained silent before and after it merged with Waste Management of Texas and continued to exist and/or operate as an empty corporate shell in an effort to hide Waste Management and Waste Management of Texas' involvement and control over the site. It remained in existence after the turn of the

century even as State officials continued their efforts to locate the source of the ongoing dioxin contamination.

International Paper also remained silent and chose not to alert the public of the dangers from the Champion Paper Mill.

17. Defendant International Paper merged with Champion International Paper ("Champion") to become the world's largest paper company. In doing so, it willingly and intentionally accepted all of Champion's environmental responsibilities. As Champion's corporate successor, it remained silent as the toxic waste ponds containing its dioxin waste were engulfed by the San Jacinto River. It remained silent even as it continued to release contaminated wastewater from its mill in Pasadena, Texas, allowing its contamination to pollute other communities. It chose not to alert the public, the government or the people fishing of the dangers to women and children that its paper mill had created because speaking up would have required it to clean up the contamination that it had caused, lowering the company's profits.

18. International Paper remained silent even after its merger with Champion in 2000 when as a company it knew all too well the devastating effects of dioxin on rivers and fish in the food chain because it had been sued by governments and people for polluting rivers in a variety of states in which it operated paper mills – with 43 lawsuits charging International Paper with dumping chemically contaminated waste in three different rivers in one state alone.[5]

[5] *United Paperworkers Intern. Union v. International Paper Co.*, 985 F.2d 1190 (1993).

International Paper brought its pattern and practice of silence, misrepresentations and intentional omissions to Harris County.

19. The San Jacinto River case is not the first time that International Paper has failed to tell the public what it needed to know in connection with dioxin contamination in rivers, and Harris County is not the first victim of International Paper's failure to provide relevant environmental information in its possession to the public. In a case brought against International Paper by the Presbyterian Church of Louisville, Kentucky and the Sisters of Saint Dominic of Blauvelt, New York, who were shareholders that had invested Church funds to buy stock in International Paper, the United States District Court for the Southern District of New York and the Second Circuit Court of Appeals both found that International Paper had misled its own shareholders with regard to the Company's environmental compliance and that its omissions in connection with environmental violations were misleading and deceptive.[6] The Second Circuit found that International Paper's representations "that it had a longstanding commitment to the protection of the environment, that it was a leader in environmental protection, that it had a vigorous compliance program and that it had addressed such issues appropriately, conveyed an impression **that was entirely false**." (emphasis added).

20. International Paper's Board was found to have acted with requisite knowledge and intent in making misstatements and omissions to its investors regarding

[6] *Id.* In that case, the Church and the Sisters sought to have International Paper's shareholders adopt a resolution designed to facilitate corporate accountability for issues concerning the environment, including a commitment to public environmental accountability. In its Proxy Statement, International Paper opposed the resolution, representing that the Company had already addressed environmental matters "in an appropriate and timely manner," and representing to its shareholders that "environmental stewardship has always been an important part of International Paper's business", that its Company principles "are consistent with International Paper's long-standing policies on environment, health and safety", and that the Company had a "strong environmental compliance program." The Court found that these statements were misleading and "palpably without merit" and "to put it charitably, inconsistent with the serious and ongoing environmental challenges the Company has endured."

its environmental compliance to mislead its shareholders and induce them to cast a negative vote against proposals that would require International Paper to implement a corporate policy of environmental accountability. It was also found that, among other things, International Paper's investors were not told of information that the Company had pled guilty to five criminal felony charges of environmental laws, engaged in knowingly illegal conduct, and engaged in the falsification of required environmental reports that International Paper knew about and should have disclosed to them.[7] Similarly, in the San Jacinto waste pits case, the citizens of Harris County were not told of information International Paper knew about and should have disclosed to them many years earlier regarding what Champion knew about the waste pits submerged into the San Jacinto River, what International Paper knew based upon its being sued for poisoning other rivers with dioxin, and what a responsible company would have revealed about the site of its previous pollution long ago.

International Paper is now getting hundreds of millions of dollars in tax credits for producing and burning the same "black liquor" that poisoned the San Jacinto River.

21. International Paper's corporate attitude and misrepresentations about environmental compliance cited above are appalling, but there is yet a more egregious aspect of International Paper's refusal to be accountable to the taxpayers of Harris County for its company's practices of dumping its toxic "black liquor" byproduct into the San Jacinto River. At the same time that International Paper is denying that it owes the

[7]The Court opinion stated that International Paper's $2.2. million criminal fine was the second largest fine ever assessed for violation of the hazardous waste laws. The Court also cited to International Paper's breach of its settlement agreement with the State of Maine and the Maine Board of Environmental Protection for violations of state environmental laws, noting that the State had returned to court seeking substantial penalties for noncompliance, among other examples of the Company's omissions designed and intended to mislead shareholders.

citizens of Harris County one dollar for decades of pollution, it is grabbing tens if not hundreds of millions of dollars in tax credits for the same "black liquor" with which it contaminated the San Jacinto River.

22. International Paper has found a way to receive a multi-million tax credit for "black liquor." Through what is described as a "tax loophole" for paper mills, a tax credit worth hundreds of millions of dollars every year is currently available (but under attack) to companies like International Paper for producing and burning "black liquor."[8]

23. While Harris County was expending local taxpayer dollars and resources to warn citizens and investigate the dangerous legacy left by the paper company's disposal of black liquor and other pollutants into the San Jacinto River, International Paper issued a press release trumpeting its receipt of a $71.6 million cash payment from the U.S. Treasury for tax breaks for the paper mill byproduct of black liquor. That huge amount of "found money" was just a small portion of the cash that International Paper would receive from the government, as its very first cash payment of $71.6 million represented a tax break for a single one-month period of operation in 2008.[9] A Goldman Sachs report estimated that International Paper could receive as much as $1.06 billion in tax benefits in 2009 alone and J.P. Morgan said International Paper could reap as much as $3.7 billion in benefits.[10] As the J.P. Morgan analyst report said, the paper companies were "burning black liquor into gold."

24. For International Paper, its black liquor turned into gold. But in Harris County, International Paper's black liquor turned into a poison in its waterways. It has long been known that the black liquor that MIMC and Champion were caught dumping

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[8] New York Times, July 20, 2012, "Tax Loopholes Block Efforts to Close Gaping U.S. Deficit."
[9] Washington Post, March 28, 2009, "Papermakers Dig Deep in Highway Bill to Hit Gold."
[10] *Id.*

into the San Jacinto River many decades ago is highly toxic to marine life, and that the people of Harris County have and continue to consume marine life impacted with wastes from the Defendants' paper production and disposal.[11] Rather than be rewarded for the intentional dumping of black liquor into the San Jacinto River and allowing it to get into the food chain for humans, International Paper should be required to disgorge its hundreds of millions in profits to Harris County residents and others who have been damaged by the toxic effects of its paper mill operations.

25. Given black liquor's legacy in Harris County, it is wildly inappropriate for International Paper to receive millions in tax credits, permitting it to obtain checks back from taxpayers to put that money back into its pocket. Rewarding International Paper in that way is simply untenable, and the first use of any tax credits received by International Paper for black liquor subsidies should be used to pay the people of Harris County.

26. Fortunately, the propriety of the controversial and highly criticized black liquor tax credit that International Paper currently enjoys is again being raised before Congress. As recently as July 20, 2012, a front-page New York Times article highlighted what many budget experts characterize as a loophole, criticizing the black liquor tax break "as a tax dodge because it allows the sludge to qualify for an energy subsidy created to wean the country off imported oil for vehicles, which the black liquor does not

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[11] *See* Material Safety Data Sheet ("MSDS") for Black Liquor published by Temple Inland (a paper company acquired by International Paper in 2012 for a reported $4.4 billion) in 1999. The MSDS describes black liquor as a substance of highly variable alkaline composition produced when wood chips are cooked in the kraft pulping process, containing excess pulping chemicals. The MSDS identifies black liquor as a reactive material, noting that contact with acids can result in release of potentially lethal concentrations of hydrogen sulfide gas. Ingestion is noted to cause serious damage to mouth, throat and stomach if accidentally ingested, and contact with unprotected skin or eyes may cause severe burns and possible blindness. The MSDS instructions advise that proper authorities should be notified if water pollution occurs and that protective clothing is a must if remediation is initiated. Under Health Hazards, it is noted that "runoff from dilution may cause pollution."

do."[12] The New York Times reports that "[f]or tax aides in both [political] parties, black liquor falls into the category of the hard to defend."[13] It will be particularly hard to defend a tax break for black liquor that does not require International Paper – who is receiving millions and/or billions in cash for "black liquor" tax breaks – to use that "found money" to pay penalties to the citizens of Harris County for the company's decades of polluting the San Jacinto River.

Waste Management of Texas remains silent as dioxin seeps into its own community.

27. Finally, and perhaps most inexplicably of all, Waste Management of Texas also remained silent even as the dioxin continued to seep into the very community that it calls home. Waste Management of Texas remained silent after it acquired MIMC and its records that document the abandonment of the San Jacinto River waste pits. It remained silent for years, while the contaminated waste pits continued to release into the waters of the San Jacinto River and while people in the County where Waste Management's corporate headquarters are located continued to fish and swim in the contaminated waters.

28. Waste Management of Texas and Waste Management claim ignorance of the fact that they bought a company that had a hidden toxic waste site submerged into a river. The public record reveals Waste Management purchased dozens if not hundreds of companies that, in turn, owned and operated hundreds if not thousands of waste sites located throughout the country. It did so to claim the economic benefits from those companies and to gain a larger share of the nation's industrial and hazardous waste business. It pursued this strategy presumably to maximize its profits and its shareholder

[12] New York Times, July 20, 2012, "Tax Loopholes Block Efforts to Close Gaping U.S. Deficit."
[13] *Id.*

value. Having undertaken a deliberate course of rolling up the industrial and hazardous waste business, Waste Management cannot credibly claim ignorance of what it purchased. The Waste Management companies have claimed that they have no duty with regard to this site – in essence, that they have no responsibility to investigate the location of toxic waste sites in companies they have purchased and no responsibility to warn the public about the health and environmental effects from those sites. Defendants' positions in this matter demonstrate the alarming need for this suit. Waste Management's real or feigned ignorance of the toxic waste sites that it owns directly or through the dozens of corporate affiliates it has created does not excuse the responsibility that Waste Management bears for contamination of the San Jacinto River and for endangering the public's health.

29. Waste Management of Texas is responsible because government documents reveal that it actually entered into a merger with MIMC and became MIMC. In addition, both Waste Management Defendants have liability for the independent reason that they chose to remain silent for years as the pollution and danger to Harris County residents continued.

Defendants should pay penalties to compensate Harris County and its residents for the consequences of their choices, actions, inactions and the conspiracy of silence in the face of grave harm to humans and the environment.

30. Unfortunately, the citizens of Harris County will continue to bear the burdens and risks associated with Defendants' persistent toxin and their actions, inactions and silence for many more years to come. Fortunately, the Texas Legislature has specifically authorized Harris County to act on behalf of its citizens to recover penalties under state law against persons who caused, suffered or allowed pollution in violation of

the Texas Water Code ("Water Code"), and the Texas Health and Safety Code ("Health & Safety Code") as Defendants have done, and penalties awarded in this matter will be shared between Harris County and the Texas Commission on Environmental Quality ("TCEQ"). The law allows Defendants to be held accountable to the residents of Harris County in the form of penalties to compensate the County and the State and deter future misconduct.

31. Because Defendants chose to cause and allow dioxin to continuously release into the San Jacinto River for many decades putting the public at risk, Harris County has been forced to expend many man hours, resources and taxpayer dollars to try to protect its citizens from this threat. The County's already limited resources have been further strained by the need to address the dioxin waste left behind by Defendants. These companies achieved a tremendous economic benefit by leaving Harris County and the public holding their waste while they pocketed the profits saved from not having to pay for proper disposal, putting them at a competitive advantage over other responsible companies. The companies who profited from this behavior should be accountable for and penalized for the damages and risks they have caused.

32. Defendants continued to be culpable even when they were ultimately identified by the authorities as they tried to disavow their actions, their impacts and each other. Waste Management tried to distance itself from MIMC and MIMC publicly blamed International Paper, pronouncing it responsible for the waste disposal practices of Champion. Despite the fish advisories, the science and the great weight of evidence of human health and ecological risks, Defendants tried to minimize the impacts of the dioxin to which they exposed the public. Instead, Defendants took the disingenuous position

that there are "minimal health effects from dioxin" and that "dioxin is not bad for human consumption." While Defendants may believe it is fine for the residents of Harris County and their visitors to eat fish poisoned with dioxin, the people of Harris County disagree.

33. The overwhelming scientific evidence long ago established that dioxin *is* bad for human consumption, and Defendants should be held accountable to those people who have unknowingly eaten their dioxin. Thus far, Defendants have gained a substantial economic benefit by failing to address this human health and environmental threat for 40-plus years at the expense of others. In 2011 alone, Defendant International Paper reported in its public filings that it had profits in excess of $1,341,000,000. During the same year, Waste Management told its investors and the public that it had $961,000,000 in profits. From 1995 through the end of 2011, International Paper had revenues of $384,000,000,000, and Waste Management reported $209,000,000,000 in revenues during the same time. When International Paper merged with Champion in 2000, it consumed a company that had revenues of over $29,000,000,000 for the previous five years and profits of $671,000,000 during that time. Despite profits and revenues in the *hundreds of millions* and even *billions* of dollars, Defendants claim that they owe the people of Harris County nothing for the toxic consequences of their profit-making ventures and the decades-long pollution of the San Jacinto River.[14]

34. Because Defendants have left a legacy of pollution in Harris County by causing and allowing dioxin to be released into the San Jacinto River instead of spending the money to properly dispose of their dangerous chemicals, it is appropriate that they now compensate Harris County for the consequence of their choices, actions and

[14] Despite acquiring and controlling MIMC, counsel for the Waste Management Defendants has told the Court that they are "strangers to the property" and have "no duty" to the people of Harris County.

inaction, and the conspiracy of silence that have put the public health and environment at risk.

III. Dioxin in the River – A Timeline

A. MIMC and Champion act in concert to dispose of, and then abandon, dioxin waste in ponds jutting out into the San Jacinto River.

35. On September 3, 1965, MIMC was formed. Ten days later, MIMC (now merged into Waste Management of Texas and doing business in Texas as Waste Management) acquired an exclusive waste disposal contract to dispose of waste from the Champion paper mill. ("Champion Mill"). While Champion (now merged into International Paper) made money by selling its paper, its paper mill generated wastewater that was contaminated with 2,3,7,8-TCDD (dioxin) and other types of dioxin.

36. Champion's paper mill produced tens of thousands of gallons of contaminated wastewater per day and millions of gallons per year that it disposed of either in waste ponds that ultimately were drained in the waterways or by discharging the wastewater directly into the waterways, including Galveston Bay.

37. Champion also chose to have some of its dioxin waste dumped into ponds built for it by MIMC. The dioxin waste pits were built separately in an area of Harris County near where the Interstate Highway 10 Bridge crosses over the San Jacinto River, east of the City of Houston between the areas known as Channelview and Highlands, Texas (the "Site"). See Exhibit B. MIMC constructed the waste ponds for Champion, selecting for this purpose approximately 20 acres on a narrow peninsula of land jutting out into the San Jacinto River. The Site was frequently inundated by the river water, and MIMC only separated the dioxin-contaminated wastewater and sludge from the waters of

the San Jacinto River by erecting earthen embankments, which leaked and deteriorated rapidly, permitting wastewater and wastes to discharge into the river.

38. Prior to MIMC's construction of these waste ponds for Champion, Champion stored its contaminated wastewater and the resulting sludge on impoundments south of the highway ("the Southern Impoundments"). MIMC assumed operation over the Southern Impoundments after it constructed the waste ponds on the north of the highway. During the period of time relevant to this lawsuit, wastewater, sludge, and other contaminants from the Southern Impoundments continuously released and discharged into the San Jacinto River, polluting it with dioxin and other chemicals.

39. From 1965 through the end of 1967, Champion continued to send contaminated wastewater to MIMC's unlined ponds, where the wastewater was stored until it was released untreated into the San Jacinto River or returned to the Champion Mill where it would eventually also be released into the river. According to reports at the time, MIMC and Champion planned to store the wastewater from the Champion Mill for a year before discharging it into the San Jacinto River.

40. Champion and MIMC had no plan for handling the solid waste residue from Champion's paper manufacturing, and the hundreds of thousands of cubic yards of that residue that was contaminated with dioxin and other pollutants. MIMC and Champion left the residue in waste pits at the Site where it still remains spread out over acres, some of it just above the water line and some of it having been submerged below the San Jacinto river waters decades ago where MIMC and Champion chose to abandon it.

41. In addition to dioxin waste seeping and releasing from the ponds into the San Jacinto River, records show that liquid waste was also intentionally pumped out of the ponds at the Site, directly into the San Jacinto River. In one documented example of this intentional illegal pumping in 1965, government officials caught MIMC pumping toxic "black liquor" waste out of one of the ponds on the Site. As a result of this incident, the Harris County Health Department documented this intentional release and specifically informed MIMC and Champion in writing that the liquid waste they were caught pumping into the San Jacinto River "still contains considerable amounts of black liquor which is highly toxic to marine life."[15] Dr. Quebedeaux, a Director at the Harris County Health Department, also informed MIMC that the earthen dikes used to contain the wastes should be repaired. MIMC and Champion were ordered to stop discharging waste from the ponds into the San Jacinto River, though wastes continued to seep and release from the ponds and the pond levees deteriorated, causing continuous releases of dioxin over the following decades.

42. In April 1966, the State Department of Health investigated the Site and determined that MIMC and Champion did not have a permit from the Texas Water Pollution Control Board to discharge their wastewater and that prior to their discharging wastewater into the San Jacinto River, MIMC would be required to obtain a permit from that state agency. Defendants have not produced any records of their obtaining a permit as required from the Texas Water Pollution Control Board for discharging their wastewater into the San Jacinto River, and yet they continued to discharge the wastewater throughout the operation of the Site into 1968.

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[15] December 28, 1965 letter to McGinnes Industrial Maintenance Company, with a copy to Champion Paper Co., from Harris County Health Unit advising of highly toxic nature of black liquor.

43. In 1966, MIMC began planning to construct a new set of wastewater ponds located further down the San Jacinto River near Hitchcock, Texas ("the Hitchcock waste ponds"). From August 1966 forward, MIMC and Champion were involved in a contentious public relations and legal battle with the local community and local government in Hitchcock, who vigorously opposed those companies' efforts to construct waste ponds near their community. In 1966-67, the City of Hitchcock even attempted to incorporate the land where the ponds were going to be built in an attempt to stop MIMC and Champion, so great were their concerns about the environmental and health impacts from those companies' operations. The City of Hitchcock and others contested MIMC's construction of the new waste ponds because of their concerns about the damaging effect the wastewater would have on the environment and possible effects on human health.

44. MIMC prevailed in its fight to construct the Hitchcock waste ponds that began taking Champion's contaminated wastewater. Throughout this time, Champion and MIMC were well aware of the public's concern with the health and environmental effects of the contaminated wastewater and sludge from Champion's Pasadena plant. They had also been informed about the toxic effects from the black liquor – a byproduct of the wastewater that they had transported and stored at the Site.[16]

45. In August 1968, the Board of Directors of MIMC held their annual board meeting. First, the Board of Directors determined that MIMC did not have enough capital to operate effectively, and therefore, they should raise more money for the

[16] Records indicate that Waste Management eventually stepped in to address the sludge pits at the McGinnes Hitchcock Waste Pits in Galveston County some 15 years after those waste pits ceased operation. The Galveston Hitchcock Site was where MIMC ultimately moved its disposal operations after abandoning its San Jacinto Waste Pits in Harris County. Officials from Waste Management went to Galveston to meet with officials from the Office of Environmental Health Services regarding the need for an extensive plan to reconstruct the levees of the defunct MIMC waste pits in Hitchcock, which consisted of earthen pits of sludge covering over 100 acres. The TCEQ requested reconstruction of the levees to protect them from the forseeable future damage, including impacts from storms.

business. Then, the Board of Directors addressed the issue of the contaminated waste ponds on the San Jacinto River. After noting that the ponds were "completely filled with waste materials," the Board of Directors voted to abandon the land and the ponds. The Board took one additional significant act at this meeting. They determined that they should reward themselves, and they granted each other bonuses, which would be the equivalent of hundreds of thousands of dollars today. There is no record of MIMC taking any further action to protect the public health or environment from ongoing releases from the San Jacinto waste pits for over forty years.

46. MIMC's 1968 decision to abandon the contaminated wastewater ponds meant that the earthen embankments would not be maintained and that the releases already taking place would not be stopped. It meant that no action would be taken to remove the contaminated solid residue from the acres of waste ponds that MIMC and Champion created. It meant that every day for over forty years, the San Jacinto ponds would release dioxins and other pollutants into the river and that no action would be taken to prevent contaminating the fish, other aquatic life or to warn the people who consumed the contaminated fish for food. It meant that the Board of Directors for MIMC would receive what would now be an amount of hundreds of thousands of dollars for leaving their toxic wastewater and its residue to poison the marine life and Harris County residents for decades to come.

47. Despite having deposited millions of gallons of its contaminated wastewater and sludge in the San Jacinto ponds, Champion took no action for the next forty years to deal with the contamination its paper mill had caused. It would instead focus its efforts on taking the novel and aggressive approach of suing the City of

Hitchcock and others who tried to stop its efforts to spread their contaminated wastewater into other communities. Together MIMC and Champion conspired with each other to dump the contaminated wastewater at the Site, abandon hundreds of thousands of cubic yards of toxic residue, and to remain silent about what they had done.

48. Aerial photographs starkly demonstrate the foreseeable effects from MIMC's and Champion's decision to ultimately just abandon the leaking ponds full of their toxic wastes and leave their dioxin unattended and unprotected, causing and allowing the 2,3,7,8-TCDD to quietly seep and migrate even further down the San Jacinto River and the Upper and Lower Galveston Bay. Aerial photographs attached as Exhibit C show the abandoned Site being submerged under the waters of the San Jacinto River.

49. Defendants' abandonment caused parts of the waste ponds full of dioxin to become submerged below the San Jacinto River's water surface, allowing continuous releases of the dioxin into the water, with each day bringing a new release and new toxins to be consumed by aquatic life and people from the start of the ill-fated operation in 1965 through April 2008, the relevant time period for this suit. Defendants' inaction and failure to take care of the wastes dumped into the ponds resulted in their dioxin being released and discharged directly and continuously into the River for more than 40 years. During the time at issue in this lawsuit, Defendants neglected to take any action to protect the citizens of Harris County from the dioxin being released into the San Jacinto River where residents were known to swim, eat fish and crabs, and recreate with their families and children.

50. Many decades later, various watershed studies being conducted by Texas state agencies collected startling data showing that fish and shellfish tissue samples taken

in the San Jacinto River contained unusually high dioxin concentrations and exceeded the health-based standard in 97% of fish samples and in 95% of the crab samples. Further testing and chemical analysis confirms that both human and ecological health are threatened by releases of dioxin from the Site and the Southern Impoundments and that Defendants' dioxin continued to migrate into the San Jacinto River and downriver. In 2009, a Texas A&M study determined that sediments from the Site "are characterized by the highest dioxin/furan concentrations reported for the entire [Houston Ship Channel/Galveston Bay] system."

B. Defendants claim ignorance and remain silent.

51. Defendants have contended that they were unaware that the wastewater from the Champion plant contained toxic chemicals that were harmful to human health or the environment. The Harris County Health Department informed Champion and MIMC in 1965 that the black liquor from the contaminated wastewater at the Site was toxic to marine life. Starting in 1967, Defendants were on notice that the City of Hitchcock, La Marque, and Galveston County opposed their efforts to dump their wastewater in their communities because of their grave concerns for public health. In 1966-68 and again in the 1970s, MIMC waged a contentious public relations battle with residents of Hitchcock over the permitting of MIMC's waste pits in the community. They were informed during that fight that opponents viewed the wastewater MIMC was receiving for treatment from Champion and other places as being associated with adverse human health effects and environmental damage.

52. Throughout the 1970s, Champion and MIMC took no action to repair the embankments on the Site, to prevent the Site's contaminated waste from being

discharged into the San Jacinto River, or to warn the public that it had simply abandoned the Champion waste in 1968. Even as MIMC and Champion claimed to the public and state officials to be reasonable and prudent environmental citizens when they sought to construct many acres of new waste pits in a different location farther down the river in Hitchcock, they remained silent about the acres of their contamination sliding beneath the waters of the San Jacinto River.

53. Companies like International Paper and Champion have been aware that dioxin was contaminating their wastewater for many decades, and they have known in this case since 1965 that their wastewater contained black liquor that was toxic to marine life. In the 1980s, the EPA and others started studying specifically the pollution from paper mills such as Champion's Pasadena plant. In March of 1988, the EPA issued a report entitled "U.S. Environmental Protection Agency/Paper Industry Cooperative Dioxin Screening Study." The purpose of the report was to follow up on an earlier federal study that demonstrated that 2,3,7,8-TCCD had been found in elevated quantities in fish located down stream of paper mills "in bleached kraft pulp and mill wastewater sludges." One of the conclusions from the study was that "[t]here is no evidence to suggest that the 2378-TCDD and 2378 TCDF are destroyed in wastewater treatment systems."

54. Consequently, by 1988, Champion and MIMC were placed on notice by the report that contaminated water and sludge from Champion's Pasadena plant that had been placed in the San Jacinto waste ponds operated by MIMC contained dioxin that was not being destroyed by the plant's wastewater treatment system. To make matters worse, at no point after this study was released did Champion or MIMC ever seek to notify state

agencies regarding the location or contents of the acres of submerged waste paper mill sludge at the Site. They did not even attempt to study the ongoing contamination caused by their wastewater and sludge, and they did nothing to inform the public not to fish, swim or recreate at or around the Site. They did nothing to remove the toxic waste that was still located at the Site even though they knew it was toxic, nor did they do anything to prevent the ongoing deterioration of the leaking dikes whether they were above or below the water line. Defendants continued to remain silent about what they knew, and they continued to cause, suffer, and allow the daily pollution of the waters of the State of Texas through ongoing releases from the Site.

55. In 1990, an EPA study reported that four International Paper mills exposed people who ate small amounts of fish from nearby rivers and streams to an unacceptable lifetime cancer risk of 1 in 10,000 or greater. Once again, in 1990, Defendants were placed on notice about the potential for persons consuming small amounts from fish to be exposed to increased risks of cancer and other health problems; yet, they again did nothing to alert the public.[17]

56. In September 1990, as a result of high dioxin levels, the Texas Department of Health issued a Fish and Shellfish Consumption Advisory for the Houston Ship Channel and all contiguous waters, and upper Galveston Bay. The San Jacinto River is a contiguous body of water to the Bay. The Department of Health warned women of childbearing age and children not to eat a single bite of catfish or blue crab from the affected waters. It recommended that no one else eat more than one meal of eight ounces of these species per month. Neither Champion nor MIMC came forward to inform the

[17] As reported by the Los Angeles Times in a September 25, 1990 article about the EPA study, "[a] regular diet of fish taken from waters near the worst of the plants studied, an International Paper Co. facility near Georgetown, S.C., would give a person a one in 50 chance of getting cancer, the EPA calculated."

Texas Department of Health, any other state agency, or the public about the source of the dioxin from the San Jacinto waste pits at the Site. For the time period for which this lawsuit seeks penalties, there is no record of either company taking any action to address the pollution that they knew or should have known was affecting the food supply.

57. Even after the Fish and Shellfish Advisory was issued in 1990, MIMC and Champion did not tell state officials what they knew to help the State solve the mystery of the source of contamination in the San Jacinto River, nor did they undertake the simple humanitarian act of stepping forward to act to protect innocent human beings from continued exposure to dioxin by disclosing what they knew. However, in stark contrast, MIMC did not hesitate to disclose its liabilities associated with the San Jacinto waste pits to its potential new owners when it stood to gain money from the sale to a company that was prepared to acquire MIMC.

58. In 1992, while State and local officials continued fruitlessly to search for the source of dioxins in the San Jacinto River, MIMC readily confessed its environmental liabilities associated with its operations on the San Jacinto River to its new owners, a company later merged into Waste Management of Texas. Recently identified internal corporate documents show that MIMC and its new owners were indisputably put on notice that: "The Company owns land located adjacent to the San Jacinto River and Interstate 10 which, at one point, was used for certain of the waste disposal activities of the Company."[18] MIMC did not hesitate to speak up regarding the San Jacinto River and its waste disposal activities there when it stood to make money from that information. Obviously, making money was more important to both MIMC and its new owners than

[18] January 30, 1992 Shareholder Disclosure Letter from McGinnes Industrial Maintenance Corporation, Lawrence P. McGinnes, Virgil C. McGinnes and Billie Doris McGinnes Gladfelter.

doing the right thing by sharing information about the San Jacinto waste pits with the State and local officials who were searching in vain for it.[19] Tellingly, while continuing to maintain its silence to the public, MIMC readily advised its new owners that while it had not received notice of any lawsuits regarding the San Jacinto waste pits, "due to the expansive nature of the Environmental Laws, [MIMC] may at some point incur a liability under the Environmental Laws with respect to such land."

59. Clearly, MIMC was aware of the possibility of lawsuits in connection with its activities associated with the San Jacinto River and that the environmental laws were so expansive that liability associated with the Site could be incurred at some point in the future. The evidence suggests that MIMC and its new owners just hoped that if they remained silent long enough, they would be able to escape liability and avoid lawsuits such as this lawsuit brought by Harris County. MIMC's owners were specifically advised and put on notice of the potential for future lawsuits and liability under the broad environmental laws in connection with the Site, since they would be assuming not just the financial benefits and rewards associated with MIMC's operations, but all of the liabilities for MIMC's operations as well.

60. As of 1992, MIMC's new owners were informed about MIMC's operations on the San Jacinto River, knew or should have known about the dangers of wastewater from paper mills, and went on to complete a statutory merger with MIMC in 1992. Even with this knowledge, MIMC and its owners still took no action to address the liabilities associated with the Site or try to investigate or stop contamination associated with dioxin at the Site. They took no action to warn the unknowing and innocent public

[19] MIMC also identified the fact that it had not set forth or adequately reserved for its liabilities associated with its waste disposal activities on the San Jacinto River in its Audited Financial Statements.

about the dangers of the Site or the danger from consuming catfish or blue crabs from the Site. They continued to remain silent even though the contamination from the waste ponds was continuing to release its contents to the waters of the San Jacinto River daily, and people continued to consume the contaminated seafood.

61. The state and local governments continued to search for the source of contamination and human health risks, and all the while MIMC and its owners could have ended that search by merely identifying what they knew. In those decades in which Defendants knowingly failed to act, countless people have consumed fish and crabs laden with dioxin.

62. During this same time period, Defendant International Paper was busy trying to portray itself as an environmentally sound and responsible company, but a federal appellate court determined that those statements were entirely false. In 1992, the United States Court of Appeals for the Second Circuit found that International Paper made false and misleading statements to its shareholders when it claimed to be an environmentally sound and responsible company.[20] In fact, at that time, International Paper was a defendant in 43 civil actions relating to the pollution of three rivers in Mississippi alone. The Court also noted that International Paper had pled guilty to five criminal charges for violating hazardous waste laws and the falsification of environmental reports. Despite the Court's firm rebuke, International Paper's environmental compliance record did not improve even after the Second Circuit Court of Appeals confirmed the lower court's opinion that International Paper could not claim to be an environmentally responsible company.

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[20] *United Paperworkers Intern. Union v. International Paper Co.*, 985 F.2d 1190 (1993).

63. International Paper merged with Champion in 2000. When International Paper made the decision to merge with Champion, it became Champion. International Paper did not merely purchase Champion's assets as it has claimed in open court in this case, nor did it purchase stock. It became the corporate successor to Champion and accepted and assumed all of Champion's environmental responsibilities. It cannot claim that it is not responsible for Champion's direct actions or that it is ignorant of Champion's prior actions or facts that Champion knew. As stated succinctly by Defendant MIMC's counsel, Al Axe, "International Paper is legally responsible for the waste disposal practices of Champion Paper Company." At no point after merging with Champion did International Paper undertake any effort to clean up or remediate the dioxin in the San Jacinto River for which it is now responsible. Only seven years earlier, International Paper had been sued for making a false statement when it claimed to be an environmentally responsible company. Despite this fact, International Paper did nothing to warn the public of the dangers of consuming seafood from the San Jacinto River and surrounding waters, continuing the conspiracy of silence among Defendants to hide the ongoing pollution of the San Jacinto River from the submerged waste pits.

C. The world continues to be reminded about the effects of dioxin.

64. In 2005, the entire world was reminded again about the poisonous effects of the dioxin known as 2,3,7,8-TCDD because of widespread news coverage of a sensational and high-profile episode of dioxin poisoning. The very same chemical that Harris County residents had unknowingly been exposed to for decades was reported to have been used to intentionally poison Ukrainian presidential candidate Victor

Yushchenko in a possible assassination attempt.[21] Newspapers and public health officials widely reported on the dangers of dioxin poisoning, particularly to women of childbearing age and children.[22] Doctors at the Johns Hopkins Bloomberg School of Public Health established a committee to examine the impact of dioxins in the food supply, identifying dioxins as carcinogenic and noting that there appeared to be no safe threshold for exposure.[23] One doctor at The Institute of Medicine at Johns Hopkins who co-authored a report entitled "Dioxins and Dioxin-like Compounds in the Food Supply" professed his shock to learn that most of the dioxin exposure to people will be communicated to fetuses and nursing infants, since dioxin consumed by women is known to be sequestered in the mother's breast milk from the fatty tissue.[24] So, while everyone who read about the assassination plot knew about the dangers of dioxin, what they did not know was that the very same poison had been silently releasing into the waters of Harris County for decades from the Site, becoming even more concentrated into the fish and crabs consumed by the public and posing a serious health threat. But, Defendants knew and chose to remain silent for fear that disclosure would have a financial impact on their corporate profits.

65. At the same time that the mystery of the attempted Presidential assassination by dioxin poisoning and the public health impacts of 2,3,7,8-TCDD poisoning were making headlines around the world, officials from Harris County and the State of Texas were confronted with their own mystery. The mystery was the source of

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[21] USA Today, December 22, 2004, Q&A: A look at dioxin poisoning and its effects. "Blood tests revealed that Ukrainian presidential candidate Viktor Yushchenko was poisoned with TCDD, the most potent form of dioxin."
[22] *Id.*; See John Hopkins Bloomberg School of Public Health, Public Health News Center, Dioxin Poisoning.
[23] *Id.*
[24] *Id.*

elevated levels of dioxins in the San Jacinto River and surrounding waterways that were creating health hazards to the people of Harris County. After 1990, when the State issued the first advisory warning people about the hazards of eating blue crab and catfish caught in the Ship Channel, the San Jacinto River and Upper Galveston Bay, public health officials searched for the hidden source of the dioxin.[25] For years, State and local scientists continued their search, at taxpayer expense, to identify the cause of the continued elevated levels of dioxin in the San Jacinto River and the Houston Ship Channel to try to protect the public.[26]

66. Although Defendants knew that decades before, they had caused and allowed Champion's dioxin to be disposed in and released from pits that MIMC had built on the San Jacinto River and intentionally abandoned, they did not see fit to share their information about the dioxin with the citizens of Harris County. For years, State and Harris County officials continued to search in vain to try to find the source of the dioxin so that they could protect the public from this public health threat. None of the Defendants spoke up to identify the dioxin and waste pits so that people could take steps to protect themselves, their children and their unborn children from dioxin exposure.

67. Without the information known to Defendants, the State and local governments continued to devote taxpayer resources to seek clues as to the source of the dioxin that was contaminating the waters and the public's food sources. In 2005, they got a step closer to solving the mystery when a Texas Parks and Wildlife biologist got a tip that a company called MIMC had operated a waste pit just north of the I-10 bridge on the

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[25] Houston Chronicle, February 15, 2007, "Officials ponder how best to clean an old industrial waste pit that long has leaked the carcinogen dioxin into the San Jacinto River / Solutions murky for tainted water."

[26] Houston Chronicle, October 4, 2007, "Cleanup could reduce dioxin level of fish in the area."

San Jacinto River.[27] Texas Parks and Wildlife personnel scoured aerial photos taken about 1970 and identified what appeared to be waste pits or an industrial site.[28] This information was given to the State, which began testing sediment from the waste pits identified.[29] Dioxin levels found in the waste pits were "astronomical," and State officials advised that they believed that fish caught in the area have continued to contain unacceptably high levels of dioxin in part because the dioxin has been leaking out of the waste pits for as long as three decades.[30]

68. The reckless consequences of Defendants' silence was chillingly highlighted in a 2007 Houston Chronicle article documenting a man fishing on the San Jacinto River with his wife and two young daughters under the I-10 bridge. "Like other fishermen, ... [he] and his family hadn't heard about the submerged industrial waste pit right across the river from where they were relaxing, a hidden threat that state officials say has been contaminating catfish, blue crabs and other marine creatures for decades," the Houston Chronicle said. The article went further to try to warn an apparently unknowing public of the poisonous threat, noting that the unsuspecting fisherman "hoped the water would give up a few catfish. He didn't know that it already has yielded clues to a mystery about why the fish he hoped to catch might be poison."[31]

69. But the mystery was still not solved, and the State and Harris County officials continued to try to identify the source of the dioxin so that the residents who still fish in the area or ate the fish could be protected from the alarmingly high dioxin levels.

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[27] Houston Chronicle, February 15, 2007, "Officials ponder how best to clean an old industrial waste pit that long has leaked the carcinogen dioxin into the San Jacinto River / Solutions murky for tainted water." Houston Chronicle, October 4, 2007, "Cleanup could reduce dioxin level of fish in the area."
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.* It is also well documented that the area is a popular fishing spot and that people continue to fish at the Site.

Although the newspapers had spread the word to the public about the McGinnes waste pits, neither McGinnes (now a Waste Management company), Waste Management nor International Paper spoke up with information that could have prevented men, women and children from becoming increasingly and more deeply exposed to dioxin poisoning. In the face of astronomical levels of dioxin from their actions and the information that it was continually releasing, Defendants did not speak up, provide information or take any steps to help protect the people of Harris County.

70. Because Defendants sat mute, Harris County officials, members of Congress and other public figures had to marshal scarce taxpayer resources and embark on a media campaign to alert the public to the dioxin threat and to try to discover information about MIMC and its operations. In 2007, Harris County and TCEQ officials even took to the radio to appeal to the public for information about MIMC. The TCEQ informed the public that investigators were looking for locals who could help them figure out exactly where the chemicals were disposed. "Our information suggests that McGinnes Industrial Maintenance Corporation operated on that site from somewhere in the mid-1960's to perhaps the early 1970's. We're not really sure about the operational history. If anyone has information about that, who worked out there, what they did, how the pits were constructed, that sort of thing, we would really like to know."[32]

71. Officials from Harris County also issued press releases and radio communications urging the public to provide any information they might have about MIMC.[33] Stunningly, while Harris County and the local Houston newspapers were making public appeals for any information about MIMC, MIMC (now a Waste

[32] Kuhf.fm broadcast, October 10, 2007.
[33] Houston Chronicle, October 25, 2007.

Management Company) was literally just a few blocks away at its offices at 1001 Fannin in downtown Houston. Its owners at Waste Management were also just a few blocks away – also headquartered at 1001 Fannin. Who better than MIMC itself and/or the Waste Management Defendants who owned and controlled it, to respond to the State and County's urgent appeals for information about MIMC that they needed to protect the public. However, International Paper, MIMC and the Waste Management Defendants again chose instead to remain silent.

72. In 2008, at the urging of Harris County and others, the San Jacinto River Site was ultimately placed on the National Priorities List of Superfund Sites. Harris County is not seeking to recover for Natural Resource Damages. Defendants should now be required to answer to the people of Harris County for poisoning the San Jacinto River and for not warning the public about the ongoing dangers of their conduct.

73. This state court lawsuit seeks monetary relief under state law only. It does not seek or challenge any cleanup, removal or remedial action dictated by federal law, and it does not assert any federal law claims.

IV. Parties.

74. Harris County is authorized to bring this suit pursuant to Texas Water Code § 7.351 for civil penalties for violations of Chapters 16, 26 or 28 of the Texas Water Code, Chapters 361, 371, 372 or 382 of the Texas Health and Safety Code and the rules and orders promulgated thereunder, and pursuant to the statutes and authorities as presented in this First Amended Petition. The Harris County Commissioners Court has unanimously authorized the filing of this lawsuit.

75. Defendant International Paper Company ("International Paper"), is a corporation incorporated in the State of New York. It has been served and answered in this matter. When International Paper merged with Champion in 2000, it became the successor to all of Champion's environmental liabilities from the Site and the Southern Impoundments.

76. Defendant McGinnes Industrial Maintenance Corporation ("MIMC") is a corporation incorporated in the State of Texas. It has its principal place of business in Houston, Texas. It has been served and answered in this matter. MIMC engaged in a merger with GC Environmental, Inc. in 1993, and GC Environmental, Inc. merged with Waste Management of Texas, Inc. in 2003. In the alternative, Harris County states that MIMC is a wholly owned subsidiary of Waste Management of Texas, Inc. and/or Waste Management, Inc. subject to Waste Management of Texas, Inc.'s and/or Waste Management, Inc.'s complete control. MIMC has been served and answered.

77. Defendant Waste Management, Inc. ("Waste Management") is a corporation incorporated in the State of Delaware, with its principal place of business in Houston, Texas. Waste Management has its principal place of business in Texas because it maintains its corporate offices in Houston, and those offices contain its high-level officers who direct, control and coordinate its activities. It has been served and answered. Waste Management has at all times relevant to this lawsuit been in complete control of Waste Management of Texas, which is both successor to MIMC and, in the alternative, the entity that owned all of the stock of MIMC. Waste Management had the right and obligation to control Waste Management of Texas and MIMC and as a result, it caused, suffered and allowed the continuous and daily pollution of the waters of the State

of Texas (specifically the San Jacinto River) from the date MIMC became part of the Waste Management corporate web of companies through April 2008.

78. Defendant Waste Management of Texas, Inc. ("Waste Management of Texas") is a corporation incorporated in the State of Texas. It has its principal place of business in Houston, Texas. Doing business in Texas as Waste Management, Waste Management of Texas owns 100% of the stock of MIMC which it merged with on December 30, 2003 by virtue of Waste Management of Texas' merger with GC Environmental. Waste Management of Texas and MIMC also have common directors for both companies as shown below:

MIMC Directors:

Gregory T. Sangalis	5/1/1999 to 7/29/1999
Bryan J. Blankfield	7/29/1999 to 2/1/2011
David P. Steiner	2/1/2001 to 7/1/2003
Linda J. Smith	7/1/2003 to present (as of 2/27/2009)

Waste Management of Texas Directors:

Gregory T. Sangalis	5/1/1999 to 7/29/1999
Bryan J. Blankfield	7/29/1999 to 2/1/2011
David P. Steiner	2/1/2001 to 7/1/2003
Linda J. Smith	7/1/2003 to present (as of 2/27/2009)

It has been served and answered in this matter.

79. The State of Texas, acting by and through the Texas Commission on Environmental Quality ("TCEQ") or ("Commission"), is a necessary and indispensible party in a suit by a local government to recover civil penalties under the Texas Water Code. TEX. WATER CODE § 7.353. It has been served and answered.

V. Applicable Law.

80. Harris County is entitled to bring suit by its own attorney for civil penalties against any person who committed or is committing "a violation or threat of

violation of Chapter 16, 26, or 28 of this code, Chapter 361, 371, 372, or 382, Health and Safety Code ... under the commission's jurisdiction ... or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government ... in the same manner as the commission ... ."[34]

WATER QUALITY ACT AND WATER CODE PROHIBITION AGAINST POLLUTION

81. Vernon's Civil Statutes, art. 7621(d), effective November 1, 1962, made it unlawful for any person to "throw, drain, run or otherwise discharge" or to "cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise enter" into the waters of the state any waste that causes a condition of pollution.[35]

82. A person found guilty of violating article 7621(d) is subject to fines of not less than $100 per day nor more than $1,000 per day of violation.[36]

83. Article 7621(d) was repealed and replaced by the passage of the Texas Water Quality Act of 1967 (the "1967 TWQA"). Section 14 of the 1967 TWQA made it unlawful for any person to "throw, drain, run or otherwise discharge into the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise enter such waters, any waste, unless pursuant to and in accordance with a then existing permit, that shall cause a condition of pollution ...."[37]

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[34] Tex. Water Code § 7.351(a).

[35] Acts 1961, 57th Leg., 1st C.S., ch. 42, HB 24, § 9 ("It shall hereafter be unlawful for any person to throw, drain, run or otherwise discharge into the waters in this State, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise enter such waters, any waste, unless pursuant to and in accordance with a then-existing permit, that shall cause a condition of pollution as defined in Subsection (g) of Section 2 of this Act.").

[36] Acts 1961, 57th Leg., 1st C.S., ch. 42, HB 24, § 10(a) ("Any person who knowingly violates any provision of Section 9 of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than One Hundred Dollars ($100) nor more than One Thousand Dollars ($1,000) and each day such a violation is committed shall constitute a separate offense. Venue shall be in the county where the waters are first polluted by the person charged with the offense.").

[37] Acts 1967, 60th Leg., R.S., ch. 313, SB 204, § 14 ("It shall hereafter be unlawful for any person to throw, drain, run or otherwise discharge into the waters in this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise enter such waters, any waste, unless pursuant to and in accordance

84. A person in violation of any portion of § 14 of the 1967 TWQA is subject to a civil penalty of not less than $50 nor more than $1,000 per day of violation. Section 15 also gave local governments such as Harris County the authority to bring suit for civil penalties for violations of § 14 of the Water Code.[38]

85. Effective September 1, 1969, the 1967 TWQA was reorganized, amended and the name shortened to the Texas Water Quality Act ("TWQA").[39] Section 4.01 of the TWQA prohibited: (1) discharge of sewage, municipal, recreational, agricultural or industrial waste into or adjacent to any water in the state, (2) any discharge of other waste which would cause pollution of any water in the state, and (3) any other act which "causes, continues to cause, or will cause pollution of any of the water in the state," and made it a violation for any person to "cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this Act or of any rule, regulation, permit, or other order of the board."[40]

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with a then existing permit, that shall cause a condition of pollution as defined in the first paragraph of Subsection (j) of Section 3 of this Act.").

[38] Acts 1967, 60th Leg., R.S., ch. 313, SB 204, § 15 ("(a) Any person violating any of the provisions of Section 14 of this Act shall be subject to a civil penalty of not less than $50 nor more than $1,000 for each and every day of such violation and for each and every act of such violation. The penalty shall be recovered in the District Courts of Travis County, the district court of the residence of the defendant, or in the district court of the county in which the violation is alleged to have occurred. Any person aiding or abetting any other person in the violation of Section 14 of this Act shall be subject to the same penalties as a person who violates the provisions of Section 14 of this Act. An action for any such violation may be brought in the following manner: (1) At the direction of the board, the attorney general shall institute and conduct a suit in the name of the State of Texas under this subsection. (2) Upon formal resolution of its governing body, a local government may institute and conduct a suit under this subsection. However, the board created by this Act is authorized to be and is a necessary and indispensable party to any suit brought by a local government under this subsection.").

[39] Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 101.

[40] Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 4.01 ("(a) Except as authorized by a rule, regulation, permit or other order issued by the board, or the executive director when authorized by the board, no person may: (1) discharge sewage, municipal waste, recreational waste, agricultural waste, 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, continues to cause, or will cause 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, unless the activity is under the jurisdiction of

86. The penalty for any person who violated or threatened to violate any provision of the TWQA "or of any rule, regulation, permit or other order of the board" was "not less than $50.00 nor more than $1,000.00 for each day and for each act of violation..."[41] Local governments retained the right to bring actions for civil penalties against any person committing or threatening to commit violations within the jurisdiction of the local government.[42]

87. In 1971, with the adoption of the Water Code, the general prohibition against pollution and the enforcement provisions of the TWQA were codified in subchapter E, Water Code §§ 21.251 – 21.256.[43] Under § 21.251, the prohibition against pollution did not change substantively from the 1969 version of the TWQA[44] and the penalty range for violations remained not less than $50 per day nor more than $1,000 per

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the Parks and Wildlife Department, the General Land Office, or the Texas Railroad Commission, in which case this Paragraph (3) does not apply ... (c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this Act or of any rule, regulation, permit, or other order of the board.").

[41] Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 4.01(d) ("Any person who violates any provision of this Act or of any rule, regulation, permit or other order of the board is subject to a civil penalty of not less than $50.00 nor more than $1,000.00 for each day of violation and for each act of violation, as the court may deem proper, to be recovered in the manner provided in this Subchapter.").

[42] Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 403(a) ("Whenever it appears that a violation or threat of violation of any provision of Section 4 of this Act, or of any rule, regulation, permit, or other order of the board has occurred or is occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the board, may cause a suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (a) of Section 4.02 of this Act against the person who committed, or is committing or threatening to commit, the violation .").

[43] Acts 1971, 62nd Leg., R.S., ch. 58, HB 343, § 1, secs. 21.251 – 21.256, pp. 96-99.

[44] Acts 1971, 62nd Leg., R.S., ch. 58, HB 343, § 1, sec. 21.251, pp. 96-97 ("(a) Except as authorized by a rule, regulation, permit, or other order issued by the board, or the executive director when authorized by the board, no person may: (1) discharge sewage, municipal waste, recreational waste, agricultural waste, 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, continues to cause, or will cause 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, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Texas Railroad Commission, in which case this Subdivision (3) does not apply. ... (c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, regulation, permit, or other order of the board.").

day of violation.[45] Local governments retained the right to bring actions for civil penalties for violations or threatened violations within their jurisdictions.[46]

88. In 1977, the Water Code was amended and the general prohibition against pollution of the waters of the state was moved to its current section. The language of the newly enacted § 26.121 was substantively the same as its present form. Except as authorized by the Commission, it was a violation for any person to: (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 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...."[47] The penalty provision that was formerly in § 26.252 was moved to § 26.122 and applied to the violation of any

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[45] Acts 1971, 62nd Leg., R.S., ch. 58, HB 343, § 1, sec. 21.252, p. 97 ("A person who violates any provision of this chapter or any rule, regulation, permit, or other order of the board is subject to a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation, to be recovered as provided in this subchapter.").

[46] Acts 1971, 62nd Leg., R.S., ch. 58, HB 343, § 1, sec. 21.254, pp. 97-98 ("(a) Whenever it appears that a violation or threat of violation of any provision of Section 21.251 of this code or any rule, regulation, permit, or other order of the board has occurred or is occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the board, may have a suit instituted in a district court through its own attorney for the injunctive relief or civil penalties or both, as authorized in Subsection (a) of Section 21.253 of this code, against the person who committed, or is committing or threatening to commit, the violation. This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power. In a suit brought by a local government under this section, the board is a necessary and indispensable party.").

[47] Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.121 ("(a) Except as authorized by a rule, permit, or order issued by the department, no person may: (1) discharge sewage, municipal waste, recreational waste, agricultural waste, 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, continues to cause or will cause 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 unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office or the Railroad Commission of Texas, in which case this subdivision does not apply... (c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, permit, or order of the department.").

provision of Water Code chapter 26, or any rule, permit or order of the TDWR.[48] The penalty range of $50 to $1,000 for each day and each act of violation remained unchanged.[49] Civil actions for the enforcement of section § 26.121 could be brought by either the TDWR[50] or by the local government in whose jurisdiction the violation occurred.[51]

89. In 1985, the maximum civil penalty for violations of Water Code § 26.121 was increased from $1,000 to $10,000 per day and per violation.[52] From September 1, 1985, the effective date of the 1985 amendments, until the enactment of Chapter 7 of the Water Code in 1997, the range of civil penalties for violations of § 26.121 and any rule, permit or order of the Texas Water Commission was not less than $50 nor more than $10,000 for each act of violation and each day of violation.

90. In 1997, the 75th Legislature, Regular Session, passed SB 1876, which repealed numerous provisions in the Water Code and the Health and Safety Code and consolidated the enforcement authority of the Texas Natural Resource Conservation

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[48] Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.122 ("A person who violates any provision of this chapter or any rule, permit, or order of the department is subject to a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation to be recovered as provided in this subchapter.").

[49] *Id.*

[50] Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.123.

[51] Acts 1977, 65th Leg., R.S., ch.. 870, SB 1139, § 1, sec. 26.124 ("Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of this code or any rule, permit or order of the department has occurred or is occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the department, may have a suit instituted in a district court through its own attorney for the injunctive relief or civil penalties or both as authorized in Subsection (a) of Section 26.123 of this code, against the person who committed or is committing or threatening to commit the violation. This power may not be exercised by a local government unless its governing body adopts a resolution authorizing the exercise of the power. In a suit brought by a local government under this section, the department is a necessary and indispensable party.").

[52] Acts 1985, 69th Leg., R.S., ch. 795, SB 249, § 5.001, sec. 26.122 ("A person who violates any provision of this chapter or any rule, permit, or order of the commission is subject to a civil penalty of not less than $50 nor more than $10,000 for each act of violation and for each day of violation to be recovered as provided in this subchapter.").

Commission ("TNRCC") into chapter 7 of the Water Code.[53] Section 26.122 (regarding penalties for violation of § 26.121)[54] and § 26.124 (regarding suit by local governments)[55] were both repealed and their respective provisions were moved to the newly enacted chapter 7 where they currently remain. The maximum penalty for violations of § 26.121 and associated regulations was increased to $25,000 per day.[56]

THE TEXAS SPILL ACT - TEX. WATER CODE § 26.266

91. In 1975, subchapter K, the Texas Oil and Hazardous Substances Spill Prevention and Control Act (the "Texas Spill Act") was added to Water Code Chapter 21. Violations were subject to penalties of not less than $50 per day nor more than $1,000 per day of violation and the penalties are cumulative of penalties and enforcement provisions provided elsewhere in the Water Code.[57]

92. In 1977, the provisions of the Texas Spill Act previously found in §§ 21.806 and 21.808, were moved to §§ 26.266 and 26.268 in the newly enacted Chapter 26

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[53] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2.

[54] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102 ("A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 18, 32, 33, or 34 of this code or Chapter 366, 371, or 372, Health and Safety Code, shall be assessed for each violation a civil penalty not less than $50 nor greater than $5,000 for each day of each violation as the court or jury considers proper. A 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, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, 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.").

[55] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.351 ("If it appears that a violation or threat of violation of Chapter 16, 26, 28, or 34 of this code or Chapter 361, 371, 372, or 382, Health and Safety Code, or a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government, the local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.").

[56] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102.

[57] Acts 1975, 64th Leg., R.S., ch. 336, SB 17, § 1, sec. 21.808(a)-(b) ("(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the Texas Water Quality Board. (b) Any person who violates any provision of this subchapter or of a board rule, regulation, or order issued pursuant to this subchapter is subject to a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation.").

of the Water Code. The text of sections 26.266[58] and 26.268[59] remained substantively the same.

93. In 1983, the Texas Spill Act was revised and the name was changed to the Texas Hazardous Substances Spill Prevention and Control Act (the "Hazardous Substances Spill Act").[60] The 1983 amendments doubled the penalty range for violations of the Hazardous Substances Spill Act from not less than $50 nor more than $1,000 per day to not less than $100 nor more than $2,000 per day.[61]

94. The Hazardous Substances Spill Act was amended again in 1985. Section 26.266 was revised to require that "[a]ny owner, operator, demise charterer, or person in charge of a vessel or of any on-shore facility or off-shore facility shall immediately undertake all reasonable actions to abate and remove the discharge or spill" of hazardous substances.[62] This provision remains essentially the same in the present version of the Hazardous Substances Spill Act.[63] Effective September 1, 1985, the maximum penalty for violation of the Hazardous Substances Spill Act was increased to $10,000 per day for each day of violation.[64]

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[58] Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.266 ("(a) Any person discharging or spilling oil or hazardous substances into coastal waters shall immediately undertake all feasible actions to abate and remove the discharge or spill … .").

[59] Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.268(a)-(b) ("(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the department. (b) Any person who violates any provision of this subchapter or of a department rule or order issued pursuant to this subchapter is subject to a civil penalty of not less than $50 nor more than $1,000 for each act of violation and for each day of violation.").

[60] Acts 1983, 68th Leg., R.S., ch. 669, SB 1241, § 1, sec. 26.261.

[61] Acts 1983, 68th Leg., R.S., ch. 669, SB 1241, § 4, sec. 26.268(b) ("Any person who violates any provision of this subchapter or of a department rule or order issued pursuant to this subchapter is subject to a civil penalty of not less than $100 nor more than $2,000 for each act of violation and for each day of violation.").

[62] Acts 1985, 69th Leg., R.S., ch. 930, HB 2068, § 5, sec. 26.266(a) ("Any owner, operator, demise charterer, or person in charge of a vessel or of any on-shore facility or off-shore facility shall immediately undertake all reasonable actions to abate and remove the discharge or spill … .").

[63] *See* Tex. Water Code § 26.266(a).

[64] Acts 1985, 69th Leg., R.S. ch. 795, § 5.005, sec. 26.268(a)(b) ("(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the commission. (b) Any person who violates

95. From September 1, 1985 until September 1, 1997, the effective date of the 1985 amendments, the civil penalty ranges for violations of § 26.266, and the rules, permits and orders issued pursuant to them remained $100 to $10,000 per day. With the passage in 1977 of SB 1876, § 26.268(b) (regarding penalties for violation of § 26.266) was repealed and the penalty provisions related to violations of the Hazardous Substance Spill Act were incorporated into the Water Code § 7.102, where they currently remain.[65] Thus, since September 1, 1997, the range of daily penalties for violations of § 26.266 and associated regulations has been not less than $50 nor more than $25,000 per day.[66]

VIOLATIONS OF SOLID WASTE DISPOSAL ACT AND ASSOCIATED REGULATIONS

96. In addition to violations of the Water Code, Defendants have violated the Texas Solid Waste Disposal Act (the "SWDA") and the rules, orders permits or other decisions of the Commission associated with the SWDA.

97. The SWDA was enacted in 1969.[67] Section 8 of the SWDA made it a violation for any person to "suffer, allow or permit the collection, storage, handling or disposal of solid waste . . . in violation of this Act or of the rules, regulations, permits,

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any provision of this subchapter or of a commission rule or order issued pursuant to this subchapter is subject to a civil penalty of not less than $100 nor more than $10,000 for each act of violation and for each day of violation.").

[65] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102 ("A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 18, 32, 33, or 34 of this code or Chapter 366, 371, or 372, Health and Safety Code, shall be assessed for each violation a civil penalty not less than $50 nor greater than $5,000 for each day of each violation as the court or jury considers proper. A 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, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, 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.").

[66] *See supra*, Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102. *See also*,Tex. Water Code § 7.102.

[67] Acts 1969, 61st Leg., R.S., ch. 405, SB 125.

licenses or other orders" authorized by the SWDA.[68] It also provides for civil penalties of not less than $50 per day nor more than $1,000 for each act of violation or day of violation[69] and allowed counties to file suit to recover civil penalties against any person violating or threatening violations of the SWDA or its regulations within the county's jurisdiction.[70]

98. In 1975, the rules enacted by the Texas Water Quality Board pursuant to its authority under the SWDA were amended adding a general prohibition against: (1) discharge or imminent threat of discharge of industrial solid waste to groundwater or surface water, (2) creation or maintenance of a nuisance, (3) endangerment of public health, and (4) disposal of industrial or hazardous waste at unauthorized locations.[71]

99. In 1981, the range of civil penalties for violations of the SWDA and regulations promulgated pursuant to it were increased. For violations of requirements

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[68] Acts 1969, 61st Leg., R.S., ch. 405, SB 125, sec. 8(a) ("No person may cause, suffer, allow or permit the collection, storage, handling or disposal of solid waste, or the use or operation of a site for the disposal of solid waste, in violation of this Act or of the rules, regulations, permits, licenses or other orders of the department or the board, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs.").

[69] Acts 1969, 61st Leg., R.S., ch. 405, SB 125, sec. 8(b) ("Any person who violates any provision of this Act or of any rule, regulation, permit, license, or other order of the department or the board, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, is subject to a civil penalty of not less than $50.00 nor more than $1,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8.").

[70] Acts 1969, 61st Leg., R.S., ch. 405, SB 125, sec. 8(d) ("Whenever it appears that a violation or threat of violation of any provision of this Act, or of any rule, regulation, permit, license, or other order of the department, the board, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, has occurred or is occurring within the jurisdiction of that county or political subdivision, the county or political subdivision, in the same manner as the board and the department, may cause a civil suit to be instituted in a district court through its own attorney for the injunctive relief or civil penalties, or both, as authorized in Subsection (c) of this section, against the person who committed, is committing, or is threatening to commit, the violation.").

[71] TWQB Order No. 75-1125-1, sec. 1.04, ("This Regulation prohibits the collection, handling, storage and/or disposal of industrial solid wastes in such a manner so as to cause:

1. The discharge or imminent threat of discharge of waste into or adjacent to the ground or surface waters of the state, except pursuant to a valid Texas Water Quality Board Permit issued under the Texas Water Quality Act;
2. The creation or maintenance of a nuisance;
3. The endangerment of the public health and welfare; and/or
4. The disposal of industrial solid waste in an unauthorized site by either the generator or carrier.").

applicable to hazardous waste, the civil penalty was not less than $100 per day nor more than $25,000 per day for each violation, while violations of requirements not applicable to hazardous waste were subject to penalties of not less than $100 per day nor more than $2,000 per day for each violation.[72] In 1985, Chapter 8 of the Solid Waste Disposal Act was revised to make the maximum penalty for all violations up to $25,000 per day.[73]

100. In 1989, the Health and Safety Code was adopted and the SWDA was re-codified into its present location in chapter 361 of the Health and Safety Code.[74] The enforcement provisions from chapter 8 of the old SWDA were reorganized and moved, without substantive revisions, to subchapters G - J §§ 361.221 – 303.[75]

101. In 1996, 30 TAC § 335.4 was adopted which is substantively the same as its present form.[76] This subsection continued the general prohibition contained in TWQB Order No. 75-1125-1 that no person "cause, suffer or allow" activities that: (1) cause the discharge or threat of discharge of industrial waste into or adjacent to the waters in the

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[72] Acts 1981, 67th Leg., R.S., ch. 831, HB 1407, § 8, sec. 8(a)(2) ("Any person who violates any provision of this Act or of any rule, permit, license, or other order of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, which is not a requirement applicable to hazardous waste, is subject to a civil penalty of not less than $100.00 nor more than $2,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section. 8. Any person who violates any requirement applicable to hazardous waste shall be subject to a civil penalty of not less than $100.00 nor more than $25,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8(a).").

[73] Acts 1985, 69th Leg., R.S., ch. 931, HB 2091, § 3, sec. 8(a) ("(2) Any person who violates any provision of this Act or of any rule, permit, license, or other order of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs, is subject to a civil penalty of not less than $100.00 nor more than $25,000.00 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8.").

[74] Acts 1989, 71st Leg., R.S., ch. 678, HB 2136, § 1, pp. 921-1053.

[75] Acts 1989, 71st Leg., R.S., ch. 678, HB 2136, § 1, pp. 1020-1046.

[76] The 2001 amendment to § 335.4 changed the reference from the Texas Water Commission in § 335.4(1) to the Texas Natural Resource Conservation Commission.

state, (2) cause the creation and maintenance of a nuisance, or (3) endanger the public health and welfare.[77]

102. In 1997, with the enactment of Chapter 7 of the Water Code, civil penalties under the SWDA were consolidated with the penalty provisions under the Water Code in § 7.102, and the penalty range was set, as it is today, at no less than $50 and no more than $25,000 per day.[78]

103. Harris County is also entitled to recover its attorney's fees, court costs, and investigative costs. Tex. Water Code § 7.108.

VI. Causes of Action.

Causes of Action Against MIMC

104. **First Cause of Action Against MIMC – Civil Penalties**. Under its authority to enforce environmental laws and regulations pursuant to Water Code § 7.351(a), Harris County sues Defendants for civil penalties for violations of the Water Code, Heath & Safety Code and regulations promulgated thereunder.

105. Harris County incorporates by reference paragraphs 1 through 103 in support of this cause of action.

106. For more than four decades, MIMC violated the general prohibition against pollution of the waters of the State contained in Texas Water Code § 26.121 and

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[77] 30 Tex. Admin. Code § 335.4 ("In addition to the requirements of § 335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause: (1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Natural Resource Conservation Commission; (2) the creation and maintenance of a nuisance; or (3) the endangerment of the public health and welfare.").

[78] *See supra*, Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102. See also, Tex. Water Code § 7.102.

its predecessors (hereinafter referred to as § 26.121)[79] by causing pollution of the waters of the State. The violations are continuing in nature beginning on the date that contamination occurred through April 2008, the time period at issue in this lawsuit. Defendant MIMC's conduct in connection with the Site has been responsible for contaminating the waters of the state since 1965. It continued to accept contaminated wastewater and sludge from the Champion Mill in Pasadena, Texas throughout 1967 and to discharge and release contaminated wastewater and sludge from the Site into 1968 from the various waste pits at the Site. As a result, the contaminated residue from the wastewater, the resulting sludge, and solid residue MIMC abandoned in 1968 released dioxin into the waters of the San Jacinto River every day from each waste pit from the day MIMC started work for Champion in 1965 through April 2008. In 1965, MIMC (now Waste Management of Texas) assumed management and control over the Southern Impoundments that contained wastewater and contaminated residue from the Champion Mill. The runoff and discharge of wastewater from the Southern Impoundments also caused the pollution of the waters of the State of Texas. Each day of these continuing violations from 1965 through April, 2008 is a separate violation from each waste pit and the Southern Impoundments and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

107. For violations of § 26.121 prior to September 1, 1967, the range of penalties is not less than $100 per day and no more than $1,000 per day.[80] Effective

[79] Acts 1961, 57th Leg., 1st C.S., ch. 42, HB 24, § 9 (effective November 1, 1962); Acts 1967, 60th Leg., R.S., ch. 313, SB 204, § 14 (effective September 1, 1967); Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 4.01(a),(c) (effective September 1, 1969); Acts 1971, 62nd Leg., R.S., ch. 58, HB 343, § 1, sec. 21.251, pp. 96-97 (effective September 1, 1971); Acts 1977, 65th Leg., R.S., ch 870, SB 1139, § 1, sec. 26.121 (a),(c) (effective September 1, 1977, as amended).
[80] Acts 1961, 57th Leg., 1st C.S., ch. 42, HB 24, § 10.

September 1, 1967, until August 31, 1985, for violations of § 26.121, the range of penalties is not less than $50 per day nor more than $1,000 per day.[81] For violations of § 26.121 from September 1, 1985 until August 31, 1997, the range of penalties is not less than $50 per day nor more than $10,000 per day.[82] Effective September 1, 1997, and continuing presently, the penalty range for violations of § 26.121 is not less than $50 per day nor more than $25,000 per day.[83] Because of the nature of the violations and the factors set forth above, Harris County believes that MIMC should be assessed the maximum amount permitted by the applicable law. The jury will ultimately determine the appropriate penalty that MIMC should pay.

108. MIMC was the owner/operator of the waste pits at the Site and failed to immediately undertake reasonable actions to abate and remove the discharge of hazardous substances from the Site in violation of the Texas Spill Act and the Hazardous Substances Spill Act as set forth in Water Code, including but not limited to Texas Water Code § 26.266 and its predecessors (hereinafter referred to as § 26.266).[84] The violations are continuing in nature beginning on June 19, 1975, the effective date of the Texas Spill Act, and continuing through April 2008.

109. Each day of these continuing violations from each waste pit and the Southern Impoundments is a separate violation and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

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[81] Acts 1967, 60th Leg., R.S., ch. 313, SB 204, § 15; Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 4.01(d); Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.122.
[82] Acts 1985, 69th Leg., R.S., ch. 795. SB 249, §§ 5.001 – 5.002, sec. 26.122.
[83] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code § 7.102.
[84] Acts 1975, 64th Leg., R.S., ch. 336, SB 17, § 1, sec. 21.806(a); Acts 1977, 65th Leg., R.S., ch 870, SB 1139, § 1, sec. 26.266; Acts 1983, 68th Leg., R.S., ch. 669, SB 1241, § 3, sec. 26.266(a); Acts 1985, 69th Leg., R.S., ch. 930, HB 2068, § 5, sec. 26.266(a) (as amended).

110. For violations of § 26.266 from June 19, 1975 until August 31, 1983, the range of penalties is not less than $50 per day nor more than $1,000 per day.[85] From September 1, 1983 until August 31, 1985, the range of penalties for violations of § 26.266 is not less than $100 per day nor more than $2,000 per day.[86] Effective September 1, 1985 until August 31, 1997, the range of penalties for violations of § 26.266 is not less than $100 per day nor more than $10,000 per day.[87] From September 1, 1997 and continuing today, the range of penalties for violations of § 26.266 is not less than $50 per day nor more than $25,000 per day.[88] Because of the nature of the violations and the factors set forth above, Harris County believes that MIMC should be assessed the maximum penalties provided for by the applicable law. The jury will ultimately determine the amount of the appropriate penalty.

111. MIMC also violated the provisions of the SWDA and 30 TAC § 335.4 and its predecessors (hereinafter referred to as "SWDA Violations")[89] by allowing the storage and discharge of solid waste at the different waste pits at the Site and the Southern Impoundments in such a manner as to create and maintain a nuisance and endanger the public health and welfare.

112. These SWDA Violations are continuing in nature beginning on November 25, 1975, the effective date of the 1975 Board Order, and continuing through April 2008. Each day of these continuing violations from each waste pit and the Southern

[85] Acts 1975, 64th Leg., R.S., ch. 336, SB 17, § 1, sec. 21.806.
[86] Acts 1983, 68th Leg., R.S., ch. 669, SB 1241, § 4, sec. 26.268(b).
[87] Acts 1985, 69th Leg., R.S., ch. 795, § 5.005, sec. 26.268(b).
[88] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102.
[89] Acts 1969, 61st Leg., R.S., ch. 405, SB 125, § 8(a); TWQB Order No. 75-1125-1, § 1.04; 30 Tex. Admin. Code.§ 335.4 (as amended).

Impoundments is a separate violation and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

113. Prior to September 1, 1981, the range of penalties for SWDA Violations is not less than $50 per day nor more than $1,000 per day.[90] From September 1, 1981, until August 31, 1997, the range of penalties for SWDA violations involving hazardous substances (such as dioxin) is not less than $100 per day nor more than $25,000 per day.[91] From September 1, 1997, and continuing until today, the range of penalties for all SWDA violations is not less than $50 per day nor more than $25,000 per day.[92] Because of the nature of the violations and the factors set forth above, Harris County believes that MIMC should be assessed the maximum amount permitted by the applicable law. The jury will ultimately determine the appropriate penalty that MIMC should pay.

114. Harris County is not seeking recovery of costs related to remediation, removal or cleanup of any property. It is not seeking Natural Resource Damages. Harris County is not seeking any injunction or declaration regarding remediation, removal or cleanup, or any federal cause of action. Instead, Harris County is seeking only civil penalties under Texas law.

115. **Second Cause of Action Against MIMC – Attorney's Fees**. Pursuant to Water Code § 7.108, Harris County asks this Court to award its reasonable attorney's fees, court costs and investigative costs incurred in relation to this proceeding. If there is an appeal to the Court of Appeals or to the Texas Supreme Court, the County seeks its additional reasonable attorney's fees and court costs on appeal.

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[90] Acts 1969, 61st Leg., R.S., ch. 405, SB 125, § 8(c).
[91] Acts 1981, 67th Leg., R.S., ch. 931, HB 1407, § 8, sec. 8(a).
[92] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code § 7.102.

116. **Third Cause of Action Against MIMC– Conspiracy**. From 1965 through April 2008, MIMC conspired with the other Defendants and/or their corporate successors to violate the Water Code, Texas Spill Act, and SWDA resulting in decades of contamination being released into the waters of the San Jacinto River and to remain silent about the on-going contamination and risk to the environment and public health. As a result of this conspiracy, MIMC is jointly and severally liable for the penalties imposed upon its co-conspirators.

Causes of Action Against Waste Management of Texas

117. **First Cause of Action Against Waste Management of Texas – Civil Penalties**. Under its authority to enforce environmental laws and regulations pursuant to Water Code § 7.351(a), Harris County sues Waste Management of Texas for civil penalties for violations of the Water Code, Heath & Safety Code and regulations promulgated thereunder.

118. Harris County incorporates by reference paragraphs 1 through 103.

119. According to documents obtained from the government, Waste Management of Texas is a successor by corporate mergers with MIMC, so it is responsible for all of MIMC's conduct from MIMC's incorporation to the current date. In addition, Waste Management of Texas–at a minimum–has had control over MIMC since at least 2003 or before. For more than four decades, MIMC and therefore Waste Management of Texas violated the general prohibition against pollution of the waters of the State contained in Texas Water Code § 26.121 and its predecessors (hereinafter referred to as § 26.121)[93] by causing pollution of the waters of the State. The violations

[93] Acts 1961, 57th Leg., 1st C.S., ch. 42, HB 24, § 9 (effective November 1, 1962); Acts 1967, 60th Leg., R.S., ch. 313, SB 204, § 14 (effective September 1, 1967); Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1,

are continuing in nature beginning on the date that contamination occurred through April 2008. Defendant MIMC's, and therefore Waste Management of Texas', conduct in connection with the Site has been responsible for contaminating the waters of the State since 1965. It continued to accept contaminated wastewater and sludge from the Champion Mill in Pasadena, Texas throughout 1967 and to discharge and release contaminated wastewater and sludge from the Site into 1968 from the various waste pits at the Site. As a result, the contaminated residue from the wastewater, the resulting sludge, and solid residue MIMC (now Waste Management of Texas) abandoned in 1968 released dioxin into the waters of the San Jacinto River every day from each waste pit from the day MIMC started work for Champion in 1965 through April 2008. In 1965, MIMC (now Waste Management of Texas) assumed management and control over the Southern Impoundments which contained waste water and contaminated residue from the Champion Mill. The runoff and discharge of wastewater from the Southern Impoundments from 1965 through April 2008, also caused the pollution of the waters of the State of Texas. Each day of these continuing violations is a separate violation from each waste pit and the Southern Impoundments and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

120. In the alternative, from at least 2003, Waste Management of Texas has controlled the operations of MIMC. Waste Management of Texas, therefore, had control over the Site where MIMC had left its contaminated waste from the Champion Mill in 1968. Because Waste Management of Texas failed to take action to stop the

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sec. 4.01(a),(c) (effective September 1, 1969); Acts 1971, 62nd Leg., R.S., ch. 58, HB 343, § 1, sec. 21.251, pp. 96-97 (effective September 1, 1971); Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.121(a),(c) (effective September 1, 1977, as amended).

contamination or warn the public or state and local agencies about the on-going pollution, it caused, suffered, and allowed the daily release of dioxin into the waters of the San Jacinto River from each waste pit and for the Southern Impoundments for which it should be penalized from assuming control over MIMC until the end of April 2008.

121. For violations of § 26.121 prior to September 1, 1967, the range of penalties is not less than $100 per day nor more than $1,000 per day.[94] Effective September 1, 1967, until August 31, 1984, for violations of § 26.121, the range of penalties is not less than $50 per day nor more than $1,000 per day.[95] For violations of § 26.121 from September 1, 1985 until August 31, 1997, the range of penalties is not less than $50 per day nor more than $10,000 per day.[96] Effective September 1, 1997, and continuing presently, the penalty range for violations of § 26.121 is not less than $50 per day nor more than $25,000 per day.[97] Because of the nature of the violations and the factors set forth above, Harris County believes that Waste Management of Texas should be assessed the maximum amount permitted by law under § 7.102 of the Water Code and other applicable penalty statutes. The jury will ultimately determine the appropriate penalty that Waste Management of Texas should pay.

122. Waste Management of Texas as the corporate successor to MIMC had the right to control the Site since at least 1965, but it failed to immediately undertake reasonable actions to abate and remove the discharge of hazardous substances from the Site and Southern Impoundments in violation of the Texas Spill Act and the Hazardous Substances Spill Act as set forth in Water Code, including but not limited to Texas Water

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[94] Acts 1961, 57th Leg.,1st C.S., ch. 42, HB 24, § 10.
[95] Acts 1967, 60th Leg.,R.S., ch. 313, SB 204, § 15; Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 4.01(d); Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.122.
[96] Acts 1985, 69th Leg., ch. 795. SB 249, §§ 5.001 – 5.002, sec. 26.122.
[97] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code. § 7.102.

Code § 26.266 and its predecessors (hereinafter referred to as § 26.266).[98] The violations are continuing in nature beginning on June 19, 1975, the effective date of the Texas Spill Act, and continuing through April 2008. In the alternative, Waste Management of Texas had the right to control the Site since 2003, but it failed to immediately undertake reasonable actions to abate and remove the discharge of pollutants from the Site and Southern Impoundments in violation of the Texas Spill Act and the Hazardous Substances Spill Act as set forth in the Water Code, including but not limited to Texas Water Code § 26.266 and its predecessors (hereinafter referred to as § 26.266).

123. Because Waste Management of Texas both as corporate successor to MIMC and as owner of MIMC's stock since 2003, failed to take action to warn the public or state and local agencies about the on-going pollution, and failed to immediately undertake reasonable actions to abate and remove the discharge of hazardous substances from the Site and Southern Impoundments in violation of the Texas Spill Act and the Hazardous Substances Spill Act, it should be penalized.

124. Each day of these continuing violations from each waste pit and the Southern Impoundments is a separate violation and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

125. For violations of § 26.266 from June 19, 1975 until August 31, 1983, the range of penalties is not less than $50 nor more than $1,000 per day.[99] From September 1, 1983 until August 31, 1985, the range of penalties for violations of § 26.266 is not less

[98] Acts 1975, 64th Leg., R.S.. ch. 336, SB 17, § 1, sec. 21.806(a); Acts 1977, 65th Leg., R.S., ch 870, SB 1139, § 1, sec. 26.266; Acts 1983, 68th Leg., R.S., ch. 669, SB 1241, § 3, sec. 26.266(a); Acts 1985, 69th Leg., R.S., ch. 930, HB 2068, § 5, sec. 26.266(a) (as amended).
[99] Acts 1975, 64th Leg., R.S. ch. 336, SB 17, § 1, sec. 21.806.

than $100 nor more than $2,000 per day.[100] Effective September 1, 1985 until August 31, 1997, the range of penalty for violations of § 26.266 is not less than $100 nor more than $10,000 per day.[101] And from September 1, 1997 and continuing today, the range of penalty for violations of § 26.266 is not less than $50 nor more than $25,000 per day.[102] Because of the nature of the violations and the factors set forth above, Harris County believes that Waste Management of Texas should be assessed the maximum amount permitted by the applicable law. The jury will ultimately determine the appropriate penalty that Waste Management of Texas should pay.

126. Waste Management of Texas, both as corporate successor to MIMC and owner of MIMC's stock since 2003, also violated the provisions of the SWDA and 30 TAC § 335.4 and its predecessors (hereinafter referred to as "SWDA Violations")[103] by allowing the storage and discharge of solid waste at the different waste pits at the Site and the Southern Impoundments in such a manner as to create and maintain a nuisance and endanger the public health and welfare.

127. Because Waste Management of Texas allowed the storage and discharge of solid waste in such a manner as to create and maintain a nuisance and endanger the public health and welfare in violation of the SWDA, it should be penalized.

128. These SWDA Violations are continuing in nature beginning on November 25, 1975, the effective date of the 1975 Board Order, and continuing through April 2008. Each day of these continuing violations from each waste pit and the Southern

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[100] Acts 1983, 68th Leg., R.S., ch. 669, SB 1241, § 4, sec. 26.268(b).
[101] Acts 1985, 69th Leg., R.S. ch. 795, § 5.005, sec. 26.268(b).
[102] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code § 7.102
[103] Acts 1969, 61st Leg., R.S., ch. 405, SB 125, § 8(a); TWQB Order No. 75-1125-1, § 1.04, App. 6; 30 TEX. ADMIN. CODE § 335.4 (as amended).

Impoundments is a separate violation and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

129. Prior to September 1, 1981, the range of penalties for SWDA Violations is not less than $50 nor more than $1,000 per day.[104] From September 1, 1981, until August 31, 1997, the range of penalties for SWDA violations involving hazardous substances (such as dioxin) is not less than $100 nor more than $25,000 per day.[105] From September 1, 1997, and continuing until today, the range of penalties for all SWDA violations is not less than $50 nor more than $25,000 per day.[106] Because of the nature of the violations and the factors set forth above, Harris County believes that Waste Management of Texas should be assessed the maximum amount permitted by law under § 7.102 of the Water Code and other applicable penalty statutes. The jury will ultimately determine the appropriate penalty Waste Management of Texas should pay.

130. Harris County is not seeking recovery of costs related to remediation, removal or cleanup of any property. Harris County is not seeking any injunction or declaration regarding remediation, removal or cleanup, or any federal cause of action. Instead, Harris County is seeking only civil penalties under Texas law.

131. **Second Cause of Action Against Waste Management of Texas – Attorney's Fees**. Pursuant to Water Code § 7.108, Harris County asks this Court to award its reasonable attorney's fees, court costs and investigative costs incurred in relation to this proceeding. If there is an appeal to the Court of Appeals or to the Texas Supreme Court, the County seeks its additional reasonable attorney's fees and court costs on appeal.

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[104] Acts 1969, 61st Leg., R.S., ch. 405, SB 125, § 8(c).
[105] Acts 1981, 67th Leg., R.S., ch. 931, HB 1407, § 8, sec. 8(a).
[106] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code § 7.102.

132. **Third Cause of Action Against Waste Management of Texas – Conspiracy**. From at least 2003 through April 2008, Waste Management of Texas conspired with the other Defendants and/or their corporate predecessors or successors to violate the Water Code, Texas Spill Act, and SWDA resulting in decades of contamination being released into the waters of the San Jacinto River and to remain silent about the on-going contamination and risk to the environment and public health. As a result of this conspiracy, Waste Management of Texas is jointly and severally liable for the penalties imposed upon its co-conspirators.

Causes of Action Against Waste Management

133. **First Cause of Action Against Waste Management – Civil Penalties**. Under its authority to enforce environmental laws and regulations pursuant to Water Code § 7.351(a), Harris County sues Waste Management for civil penalties for violations of the Water Code, Heath & Safety Code and regulations promulgated thereunder.

134. Harris County incorporates by reference paragraphs 1 through 103.

135. Waste Management is the ultimate sole owner of Waste Management of Texas and, therefore, of MIMC. Waste Management of Texas has had control over the Site through its ownership since at least 2003 if not before. Waste Management violated the general prohibition against pollution of the waters of the State contained in Texas Water Code § 26.121 and its predecessors (hereinafter referred to as § 26.121)[107] by causing pollution of the waters of the State. The violations are continuing in nature beginning on the date that contamination occurred through April 2008. Contaminated

[107] Acts 1961, 57th Leg., 1st C.S., ch. 42, HB 24, § 9 (effective November 1, 1962); Acts 1967, 60th Leg., R.S., ch. 313, SB 204, § 14 (effective September 1, 1967); Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 4.01(a)(c) (effective September 1, 1969); Acts 1971, 62nd Leg., R.S., ch. 58, HB 343, § 1, sec. 21.251, pp. 96-97 (effective September 1, 1971); Acts 1977, 65th Leg., R.S., ch 870, SB 1139, § 1, sec. 26.121(a),(c) (effective September 1, 1977, as amended).

residue from the wastewater, the resulting sludge, and solid residue MIMC abandoned in 1968 released dioxin into the waters of the San Jacinto River every day from each waste pit from the day MIMC started work for Champion in 1965 through April 2008. Each day of these continuing violations from each waste pit and the Southern Impoundments is a separate violation and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

136. Because Waste Management failed to take action to stop the contamination or warn the public or state and local agencies about the on-going pollution, it caused, suffered, and allowed the daily release of dioxin into the waters of the San Jacinto River, it should be penalized.

137. For violations of § 26.121 prior to September 1, 1967, the range of penalties is not less than $100 per day nor more than $1,000 per day.[108] Effective September 1, 1967, until August 31, 1984, for violations of § 26.121, the range of penalties is not less than $50 per day nor more than $1,000 per day.[109] For violations of § 26.121 from September 1, 1985 until August 31, 1997, the range of penalties is not less than $50 per day nor more than $10,000 per day.[110] Effective September 1, 1997, and continuing presently, the penalty range for violations of § 26.121 is not less than $50 per day nor more than $25,000 per day.[111] Because of the nature of the violations and the factors set forth above, Harris County believes that Waste Management should be assessed the maximum amount permitted by law under § 7.102 of the Water Code and

[108] Acts 1961, 57th 1st C.S., ch. 42, HB 24, § 10.
[109] Acts 1967, 60th Leg., ch. 313, SB 204, § 15; Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 4.02; Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.122.
[110] Acts 1985, 69th Leg., ch. 795. SB 249, §§ 5.001 – 5.002, sec. 26.122.
[111] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code § 7.102.

other applicable penalty statutes. The jury will ultimately determine the appropriate penalty that Waste Management should pay.

138. Despite its right to control the Site, Waste Management failed to immediately undertake reasonable actions to abate and remove the discharge of hazardous substances from the Site in violation of the Texas Spill Act and the Hazardous Substances Spill Act as set forth in Water Code, including but not limited to Texas Water Code § 26.266 and its predecessors (hereinafter referred to as § 26.266).[112] The violations are continuing in nature beginning from at least when it obtained the right to control actions with regard to the Site in 2003 through April 2008.

139. Because Waste Management failed to take action to warn the public or state and local agencies about the on-going pollution, and failed to immediately undertake reasonable actions to abate and remove the discharge of hazardous substances from the Site in violation of the Texas Spill Act and the Hazardous Substances Spill Act, it should be penalized.

140. Each day of these continuing violations from each waste pit and the Southern Impoundments is a separate violation and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

141. For violations of § 26.266 from June 19, 1975 until August 31, 1983, the range of penalties is not less than $50 nor more than $1,000 per day.[113] From September 1, 1983 until August 31, 1985, the range of penalties for violations of § 26.266 is not less

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[112] Acts 1975, 64th Leg., R.S., ch. 336, SB 17, § 1, sec. 21.806(a); Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.266; Acts 1983, 68th Leg., R.S., ch. 669, SB 1241, § 3, sec. 26.266(a); Acts 1985, 69th Leg., R.S., ch. 930, HB 2068, § 5, sec. 26.266(a) (as amended).
[113] Acts 1975, 64th Leg., R.S. ch. 336, SB 17, § 1, sec. 21.806.

than $100 nor more than $2,000 per day.[114] Effective September 1, 1985 until August 31, 1997, the range of penalty for violations of § 26.266 is not less than $100 nor more than $10,000 per day.[115] And from September 1, 1997 and continuing today, the range of penalty for violations of § 26.266 is not less than $50 nor more than $25,000 per day.[116] Because of the nature of the violations and the factors set forth above, Harris County believes that Waste Management should be assessed the maximum amount permitted by the applicable law. The jury will ultimately determine the appropriate penalty that Waste Management should pay.

142. Waste Management also violated the provisions of the SWDA and 30 TAC § 335.4 and its predecessors (hereinafter referred to as "SWDA Violations")[117] by allowing the storage and discharge of solid waste at the different waste pits at the Site and the Southern Impoundments in such a manner as to create and maintain a nuisance and endanger the public health and welfare.

143. From at least 2003, Waste Management had the right to control the Site and the Southern Impoundments where MIMC had left its contaminated solid waste from the Champion Mill in 1968. Because Waste Management of Texas allowed the storage and discharge of solid waste in such a manner as to create and maintain a nuisance and endanger the public health and welfare in violation of the SWDA, it should be penalized.

144. These SWDA Violations are continuing in nature beginning from at least when it obtained the right to control the Site in 2003 through April 2008. Each day of these continuing violations from each waste pit and the Southern Impoundments is a

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[114] Acts 1983, 68th Leg., R.S., ch. 669, SB 1241, § 4, sec. 26.268(b).
[115] Acts 1985, 69th Leg., R.S. ch. 795, § 5.005, sec. 26.268(a)(b)(e).
[116] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code § 7.102.
[117] Acts 1969, 61th Leg., R.S., ch. 405, SB 125, § 8(a); TWQB Order No. 75-1125-1, § 1.04; 30 Tex. Admin. Code § 335.4 (as amended).

separate violation and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

145. Prior to September 1, 1981, the range of penalties for SWDA Violations is not less than $50 nor more than $1,000 per day.[118] From September 1, 1981, until August 31, 1997, the range of penalties for SWDA violations involving hazardous substances (such as dioxin) is not less than $100 nor more than $25,000 per day.[119] From September 1, 1997, and continuing until today, the range of penalties for all SWDA violations is not less than $50 nor more than $25,000 per day.[120] Because of the nature of the violations and the factors set forth above, Harris County believes that Waste Management should be assessed the maximum amount permitted by law under § 7.102 of the Water Code and other applicable penalty statutes. The jury will ultimately determine the appropriate penalty that Waste Management should pay.

146. Harris County is not seeking recovery of costs related to remediation, removal or cleanup of any property. Harris County is not seeking any injunction or declaration regarding remediation, removal or cleanup. Instead, Harris County is seeking only civil penalties under Texas law.

147. **Second Cause of Action Against Waste Management – Attorney's Fees**. Pursuant to Water Code § 7.108, Harris County asks this Court to award its reasonable attorney's fees, court costs and investigative costs incurred in relation to this proceeding. If there is an appeal to the Court of Appeals or to the Texas Supreme Court, the County seeks its additional reasonable attorney's fees and court costs on appeal.

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[118] Acts 1969, 61st Leg., R.S., ch. 405, SB 125, § 8(c).
[119] Acts 1981, 67th Leg., R.S., ch. 931, HB 1407, § 8, sec. 8(a).
[120] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code § 7.102.

148. **Third Cause of Action Against Waste Management – Conspiracy**. From at least 2003 through April 2008, Waste Management conspired with the other Defendants and/or their corporate predecessors or successors to violate the Water Code, Texas Spill Act, and SWDA resulting in decades of contamination being released into the waters of the San Jacinto River and to remain silent about the on-going contamination and risk to the environment and public health. As a result of this conspiracy, Waste Management is jointly and severally liable for the penalties imposed upon its co-conspirators.

Causes of Action Against International Paper

149. **First Cause of Action Against International Paper – Civil Penalties**. Under its authority to enforce environmental laws and regulations pursuant to Water Code § 7.351(a), Harris County sues International Paper for civil penalties for violations of the Water Code, Heath & Safety Code and regulations promulgated thereunder.

150. Harris County incorporates by reference paragraphs 1 through 103.

151. For more than four decades, International Paper violated the general prohibition against pollution of the waters of the State contained in Texas Water Code § 26.121(a) and its predecessors (hereinafter referred to as § 26.121)[121] by causing pollution of the waters of the State. The violations are continuing in nature beginning on the date that that contamination occurred through April 2008. Defendant International Paper's conduct in connection with the Site and Southern Impoundments has been responsible for contaminating the waters of the State since 1965. Each day of these

[121] Acts 1961, 57th Leg., 1st C.S., ch. 42, HB 24, § 9 (effective November 1, 1962); Acts 1967, 60th Leg., R.S., ch. 313, SB 204, § 14 (effective September 1, 1967); Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 4.01(a)-(c) (effective September 1, 1969); Acts 1971, 62nd Leg., R.S., ch. 58, HB 343, § 1, sec. 21.251, pp. 96-97 (effective September 1, 1971); Acts 1977, 65th Leg., R.S., ch 870, SB 1139, § 1, sec. 26.121 (a),(c) (effective September 1, 1977, as amended).

continuing violations from each waste pit at the Site and Southern Impoundments is a separate violation and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

152. For violations of § 26.121 prior to September 1, 1967, the range of penalties is not less than $100 per day nor more than $1,000 per day.[122] Effective September 1, 1967, until August 31, 1985, for violations of § 26.121, the range of penalties is not less than $50 per day nor more than $1,000 per day.[123] For violations of § 26.121 from September 1, 1985 until August 31, 1997, the range of penalties is not less than $50 per day nor more than $10,000 per day.[124] Effective September 1, 1997, and continuing presently, the penalty range for violations of § 26.121 is not less than $50 per day nor more than $25,000 per day.[125] Because of the nature of the violations and the factors set forth above, Harris County believes that International Paper should be assessed the maximum amount permitted by law under § 7.102 of the Water Code and other applicable penalty statutes. The jury will ultimately determine the appropriate penalty that International Paper should pay.

153. International Paper generated the contaminated wastewater and sludge containing toxic dioxin and retained control over the disposition of the waste pits at the Site through its relationship with MIMC, and yet, International Paper failed to immediately undertake reasonable actions to abate and remove the discharge of hazardous substances from the waste pits at the Site and the Southern Impoundments in violation of the Texas Spill Act and the Hazardous Substances Spill Act as set forth in

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[122] Acts 1961, 57th Leg., 1st C.S., ch. 42, HB 24, § 10.
[123] Acts 1967, 60th Leg., R.S., ch. 313, SB 204, § 15; Acts 1969, 61st Leg., R.S., ch. 760, SB 147, § 1, sec. 4.01(d); Acts 1977, 65th Leg., R.S., ch 870, SB 1139, § 1, sec. 26.122.
[124] Acts 1985, 69th Leg., R.S., ch. 795. SB 249, §§ 5.001 – 5.002, sec. 26.122.
[125] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code § 7.102.

Water Code, including but not limited to Texas Water Code § 26.266 and its predecessors (hereinafter referred to as § 26.266).[126] Those violations are continuing in nature beginning on June 19, 1975, the effective date of the Texas Spill Act, and continuing through April 2008.

154. Each day of these continuing violations from each waste pit and the Southern Impoundments at the Site is a separate violation and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

155. For violations of § 26.266 from June 19, 1975 until August 31, 1983, the range of penalties is not less than $50 nor more than $1,000 per day.[127] From September 1, 1983 until August 31, 1985, the range of penalties for violations of § 26.266 is not less than $100 nor more than $2,000 per day.[128] Effective September 1, 1985 until August 31, 1997, the range of penalty for violations of § 26.266 is not less than $100 nor more than $10,000 per day.[129] And from September 1, 1997 and continuing today, the range of penalty for violations of § 26.266 is not less than $50 nor more than $25,000 per day.[130] Because of the nature of the violations and the factors set forth above, Harris County believes that International Paper should be assessed the maximum amount permitted by the applicable statute. The jury will ultimately determine the appropriate penalty that International Paper should pay.

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[126] Acts 1975, 64th Leg., R.S. ch. 336, SB 17, § 1, sec. 21.806(a); Acts 1977, 65th Leg., R.S., ch. 870, SB 1139, § 1, sec. 26.266; Acts 1983, 68th Leg., R.S., ch. 669, SB 1241, § 3, sec. 26.266(a); Acts 1985, 69th Leg., R.S., ch. 930, HB 2068, § 5, sec. 26.266(a) (as amended).
[127] Acts 1975, 64th Leg., R.S., ch. 336, SB 17, § 1, sec. 21.806.
[128] Acts 1983, 68th Leg., R.S., ch. 669, SB 1241, § 4, sec. 26.268(b).
[129] Acts 1985, 69th Leg., R.S. ch. 795, § 5.005, sec. 26.268(b).
[130] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code § 7.102.

156. International Paper also violated the provisions of the SWDA and 30 TAC § 335.4 and its predecessors (hereinafter referred to as "SWDA Violations")[131] by allowing the storage and discharge of solid waste at each waste pit and the Southern Impoundments in such a manner as to create and maintain a nuisance and endanger the public health and welfare.

157. These SWDA Violations are continuing in nature beginning on November 25, 1975, the effective date of the 1975 Board Order, and continuing until April 2008. Each day of these continuing violations from each waste pit and the Southern Impoundments is a separate violation and each day is, therefore, subject to a civil penalty the range of which is based upon the statutory provision in effect on that date.

158. Prior to September 1, 1981, the range of penalties for SWDA Violations is not less than $50 nor more than $1,000 per day.[132] From September 1, 1981, until August 31, 1997, the range of penalties for SWDA violations involving hazardous substances (such as dioxin) is not less than $100 nor more than $25,000 per day.[133] From September 1, 1997, and continuing until today, the range of penalties for all SWDA violations is not less than $50 nor more than $25,000 per day.[134] Because of the nature of the violations and the factors set forth above, Harris County believes that International Paper should be assessed the maximum amount permitted by law under § 7.102 of the Water Code and other applicable penalty statutes. The jury will ultimately determine the appropriate penalty that International Paper should pay.

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[131] Acts 1969, 61st Leg., R.S., ch. 405, SB 125, § 8(a); TWQB Order No. 75-1125-1, § 1.04; 30 Tex. Admin. Code.§ 335.4 (as amended).
[132] Acts 1969, 61st Leg., R.S., ch. 405, SB 125, § 8(c).
[133] Acts 1981, 67th Leg., R.S., ch. 931, HB 1407, § 8, sec. 8(a).
[134] Acts 1997, 75th Leg., R.S., ch. 1072, SB 1876, § 2, sec. 7.102; Tex. Water Code § 7.102.

159. Harris County is not seeking recovery of costs related to remediation, removal or cleanup of any property. Harris County is not seeking any injunction or declaration regarding remediation, removal or cleanup. Instead, Harris County is seeking only civil penalties under Texas law.

160. **Second Cause of Action Against International Paper – Attorney's Fees**. Pursuant to Water Code § 7.108, Harris County asks this Court to award its reasonable attorney's fees, court costs and investigative costs incurred in relation to this proceeding. If there is an appeal to the Court of Appeals or to the Texas Supreme Court, the County seeks its additional reasonable attorney's fees and court costs on appeal.

161. **Third Cause of Action Against International Paper – Conspiracy**. From 1965 through April 2008, International Paper conspired with the other Defendants and/or their corporate predecessors or successors to violate the Water Code, Texas Spill Act, and SWDA resulting in decades of contamination being released into the waters of the San Jacinto River and to remain silent about the on-going contamination and risk to the environment and public health. As a result of this conspiracy, International Paper is jointly and severally liable for the penalties imposed upon its co-conspirators.

VII. Case Not Removable

162. This case is not removable to federal court. There is no federal-question jurisdiction because Harris County is not bringing any federal claims. Instead, Harris County is seeking only civil penalties under Texas law. There is no diversity jurisdiction because Harris County and at least one defendant are citizens of Texas.

VIII. Jury Demand

163. Harris County demands a jury trial.

IX. Prayer for Relief

164. For these reasons, Harris County seeks the following relief in this matter in addition to any and all relief to which it is entitled:

a. Money judgment for civil penalties as set forth above;

b. Attorney's fees, court costs and investigative fees in connection with this action and any appeal;

c. Prejudgment and postjudgment interest as allowed by law; and

d. Such additional relief as Harris County may show itself entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF, HARRIS COUNTY, TEXAS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument is being served upon all counsel of record via United States certified mail, return receipt requested, on the 15th day August, 2012.

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A

MINUTES OF SPECIAL MEETING
OF
THE BOARD OF DIRECTORS
OF
McGINNES INDUSTRIAL MAINTENANCE CORPORATION

A Special Meeting of the Board of Directors of McGinnes Industrial Maintenance Corporation was held at the corporate offices on August 19, 1968, at 10:00 o'clock A.M. pursuant to Waiver of Notice signed by all the Directors of said corporation.

The following, constituting all of the Directors of said corporation, were present at the meeting:

Virgil C. McGinnes
Lawrence P. McGinnes
George H. Lowry

Virgil C. McGinnes acted as Chairman and George H. Lowry acted as Secretary. A Waiver of Notice of the Meeting signed by all the Directors was presented and the Secretary was instructed to file it with the Minutes of the Meeting.

The Chairman reported that the officers of the corporation were holding office pursuant to a resolution of the Board of Directors of September 3, 1965; and that it was in order to re-elect officers of the corporation. Upon motion duly made and seconded, the following resolution was unanimously adopted:

"RESOLVED that the persons named below be and they are hereby elected to the offices set forth opposite their respective names to hold

office until the next Annual Meeting of the Board of Directors and until their successors are duly elected and qualified.

Name	Office
Lawrence P. McGinnes	President
Virgil C. McGinnes	Vice President
George H. Lowry	Secretary-Treasurer;

and be it

FURTHER RESOLVED that the Secretary-Treasurer of this corporation be paid a monthly salary of $200.00 per month."

There was a general discussion concerning the financial operations of the corporation and of the contribution of certain employees of the corporation to its financial growth. Upon motion duly made and seconded, the following resolution was unanimously adopted:

"RESOLVED that cash bonuses be paid to the employees listed below in the amounts therein specified for the fiscal year ending August 31, 1968:

Employee	Amount of Bonus
Lawrence P. McGinnes	$9,500.00
Virgil C. McGinnes	2,000.00
George H. Lowry	2,000.00
A. D. Kimball	2,000.00
Brenda Tolar	500.00
L. W. Zirjacks	500.00."

There was a general discussion concerning the necessity of the corporation establishing the image of a solid capital structure to its business customers. It was the consensus that $1,000 of stated capital presented an unfavorable image of the financial stability of the corporation. The Chairman discussed

the fact that negotiations were being held with a large industrial firm and it was his opinion that a capital structure of $1,000 would not assist in the negotiations. All Directors in attendance were of the opinion that it was necessary to revamp the capital structure of the corporation in anticipation of more business, with the distinct possibility of borrowings on behalf of the corporation to finance additional growth. Upon motion duly made and seconded, the following resolution was unanimously adopted;

> "RESOLVED that $99,000 of the Earned Surplus of this corporation be and the same is hereby transferred to the Stated Capital of this corporation and be it
>
> FURTHER RESOLVED that the proper officers of this corporation do all things necessary and proper to cause the capital structure of this corporation to be adjusted pursuant to the foregoing resolution."

There was a general discussion concerning the declaration of a dividend for the fiscal year ending August 31, 1968. The Chairman discussed the fact that the barges of the corporation were deteriorating very rapidly and he anticipated that, in the near future, it would be an absolute necessity to replace a number of the barges, all of which would involve a considerable amount of cash outlay. He also stated that the negotiations for a contract with a large industrial firm, Olin Mathieson, necessitate the retention of the earning of the corporation to finance the contract. It was the consensus of the Directors present that the corporation should conserve its

earnings and cash to meet the anticipated needs of the corporation and to assist in its financial growth. Therefore, the Board decided to pass the declaration of dividends to a future date.

Discussion then turned to certain real estate owned by the corporation on the San Jacinto River, which was used during fiscal 1966 and part of fiscal 1967 as a dump for waste materials hauled by the corporation. The chairman stated that during a conference with the corporation's auditors the physical status of the property was discussed. It was pointed out that the property was completely filled with waste materials and could no longer serve as a dump site. Due to its physical condition it was also regarded that the land was worthless in that it had no present sales value. Because of these factors, the corporation's auditors were instructed to eliminate the land as an asset from the corporation's books and records by writing down its stated book value from $50,000 cost to the nominal sum of $1. This action would be reflected in the corporation's balance sheet as of August 31, 1968. Based on the foregoing and upon motion duly made, seconded and unanimously approved, it was

> RESOLVED, that the real estate owned by this corporation on the San Jacinto River, previously used as a dump site in connection with corporate hauling activities, be abandoned as a dump site; and that said land be eliminated as an asset from the corporation's books and records by reducing its stated book value from cost of $50,000 to the nominal sum of $1.
>
> FURTHER RESOLVED, that all action previously taken by the corporate officers to accomplish the purposes of the above Resolution are hereby ratified and affirmed.

There being no further business to come before the meeting, it was upon motion duly made, unanimously resolved to adjourn.

George H. Lowry, Secretary

DATED: August 19, 1968

WAIVER OF NOTICE OF SPECIAL MEETING

OF THE BOARD OF DIRECTORS OF

McGINNIS INDUSTRIAL MAINTENANCE CORPORATION

We, the undersigned, Directors of McGinnes Industrial Maintenance Corporation, a Texas corporation, do hereby severally waive notice of the time, place and purpose of a special meeting of the Board of Directors of said corporation and consent that the same may be held at 5619 Griggs Road, Houston, Texas, on the 19th day of August, 1968 at 10:00 o'clock A.M., and we do further consent to the transaction of any and all business of whatsoever nature as may come before the meeting.

Virgil C. McGinnes

Virgil C. McGinnes

L. P. McGinnes

Lawrence P. McGinnes

George H. Lowry

George H. Lowry

DATED: August 19, 1968

B

APPROXIMATE AREA OF WASTE PIT PROPERTY

PRELIMINARY SITE PERIMETER

San Jacinto Waste Pits Area of Concern

AREA OF CONCERN

C

1956

1962

1964

1973

1981

1984

~1989-90

1992

1999

2003

2005