

LOOKING BACK AT HURRICANE HARVEY AND THE ROAD TO RECOVERY AHEAD

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Hurricane Harvey made landfall near Port Aransas on August 25th, 2017 before turning northeast and inland, stalling over southern Texas and bringing between 40 and 61 inches of rainfall to eastern Texas and parts of Louisiana. According to a press release by the Federal Emergency Management Agency (FEMA), “the Houston area experienced the largest amount of rainwater ever recorded in the continental United States from a single storm (51.88 inches). Twenty-four hospitals were evacuated, 61 communities lost drinking water capability, 23 ports were closed, 781 roads were impassable [and] nearly 780,000 Texans evacuated their homes.” Besides the cost of the lost economic potential, the extent of the infrastructural damage, and the multitude of displaced Texans, the environmental catastrophe caused by rising floodwaters and poor disaster preparedness procedures at numerous oil refineries and petrochemical manufacturing plants is just beginning to be unearthed.

The Houston area is one of the largest petrochemical manufacturing centers in the world. According to the Greater Houston Partnership, the Houston metropolitan area is home to 92 petroleum-manufacturing establishments, 535 chemical manufacturing establishments, and 223 plastic manufacturing establishments. The sheer density of petrochemical manufacturing plants and oil refineries in the Houston area poses a major environmental risk even with sufficient disaster preparedness procedures. Yet, A recent study published by hydrologists and land-use experts at RICE University and Texas A&M University at Galveston analyzed flood claims in numerous Houston suburbs from 1999 until 2009 and found that “the Federal Emergency Management Agency’s 100-year flood plain maps — the tool that U.S. officials use to determine both flood risk and insurance premiums — failed to capture 75 percent of flood damages from five serious floods, none of which reached the threshold of a 100-year event.” Due to the inaccuracies present in FEMA’s floodplain maps, many petrochemical manufacturing companies and oil refineries were not adequately prepared to deal with flooding that exceeded FEMA projections and, as a result, were responsible for the emission of 5.46 millions pounds of toxic air pollutants in the days after Hurricane Harvey.

As Houston begins the long and arduous process of rebuilding and recovering in the wake of the 2017 Atlantic Hurricane season, some counties are turning to the judicial system to remedy the damage caused by the emission of large quantities of harmful air pollutants following Hurricane Harvey. Recently, Harris County filed suit against French multinational petrochemical manufacturing company, Arkema, alleging that the company “caused, suffered, allowed, or permitted unauthorized air releases from its chemical manufacturing facility in Harris County, which caused adverse health effects and required nearby residents to be evacuated from their homes.” The plaintiff maintains that the plant’s emission of nearly 85 thousand pounds of toxic air pollutants in the days after Hurricane Harvey, as well as the August 31st evacuation of all residents with a 1.5-mile radius of the plant, constitute a statutory nuisance. Furthermore, the plaintiff cites numerous emission event violations under the Texas Health and Safety Code, and multiple instances of improper permitting, inadequate disaster preparedness measures, and penalties assessed to the plant by the Texas Commission on Environmental Quality. Harris County seeks a permanent injunction ordering the Defendant to comply with the Texas Water Code, the Texas Clean Air Act, and Commission Rules at the Facility as well as civil penalties, court costs, and attorney’s fees.-

While there is no sure way to prevent against natural disasters and the environmental catastrophes that often accompany them, proper planning and preparation can greatly reduce the cost of enforcement, litigation, and penalties for businesses while also ensuring that

valuable public resources such as air and water are properly safeguarded. The California Environmental Attorneys at Bick Law LLP are experts in environmental compliance counseling and routinely represent companies in California and other jurisdictions around the country in-regulatory enforcement matters. Our attorneys provide compliance counseling for all regulatory programs (RCRA, CWA, CAA, RPPC, e-waste, DOT, and OSHA) and communicate with the appropriate authorities on behalf of our clients in order to minimize liability and avoid sanctions that could have ripple effects for current and future projects.