

ISSUE SUMMONS

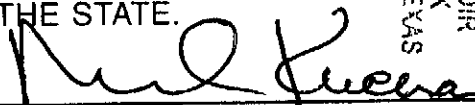
C-1-CR-09-402083

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Comes now the undersigned Assistant County Attorney of Travis County, Texas, on behalf of the State of Texas, and presents in and to the County Criminal Court at Law No. _____ of Travis county, Texas, that in Travis County, Texas, and anterior to the filing of this information


Fifth Generation, Inc., aka Tito's Distillery, by and through its agent, on or about the 15th day of September, 2009, did then and there discharge and allow the discharge of a waste and pollutant, to wit: an industrial process wastewater containing ethanol, into water in the state, namely a tributary of Dry Creek, at or near 12000 block of Moore Road in Travis County Texas, that caused and threatened to cause water pollution, said discharge not being in strict compliance with all required permits and with an order issued or rule adopted by the appropriate regulatory agency, namely the Texas Commission on Environmental Quality.

AGAINST THE PEACE AND DIGNITY OF THE STATE.


Assistant County Attorney of
Travis County, Texas

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 9-25-09



Dana DeBeauvoir, County Clerk
By Deputy: 

DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

2009 SEP 25 PM 4:02

FILED FOR RECORD

C-1-CR-09-402083

Cause No. _____

THE STATE OF TEXAS	§	IN THE (MUNICIPAL) (JUSTICE)
	§	(COUNTY) COURT (CITY OF
	§	AUSTIN) (PCT.) OR C.C. AT LAW
	§	NO. _____)
COUNTY OF TRAVIS	§	TRAVIS COUNTY, TEXAS

AFFIDAVIT OF PROBABLE CAUSE

The undersigned Affiant, who after being duly sworn by me, on oath, makes the following statement:

I have good reason to believe and do believe that **FIFTH GENERATION, INC.**, (aka Tito's Distillery), a Corporation, by and through its agent, on or about the 15th day of September, 2009, did commit the offense of allowing the unauthorized discharge of a waste or pollutant, namely industrial process wastewater, into water in the State, to wit, an unnamed tributary of Dry Creek, located at or near the 12000 block of Moore Road, in Austin, Travis County, Texas that caused or threatened to cause water pollution, said discharge not being in strict compliance with all required permits or with an order issued or rule adopted by the appropriate regulatory agency, namely the Texas Commission on Environmental Quality, in violation of Texas Water Code Chapter 7.147 Unauthorized Discharge.

The undersigned Affiant, Sgt. Dennis Rudder, is a Certified Texas Peace Officer, and is currently employed as an Investigator by the Travis County Attorney's Office. Affiant has approximately 18 years experience as a Registered Professional Sanitarian, Certified Code Enforcement Officer, and Master Texas Peace Officer, investigating complex and highly technical criminal investigations related to environmental laws at the local, state, and federal level. Affiant has received extensive training in criminal environmental law enforcement from various regional and state agencies, and the United States Environmental Protection Agency. Your Affiant was assisted in this investigation by Sgt. Jonathan Gray, Texas Parks and Wildlife Department, Environmental Crimes Unit, Detective Sidney Parker, Travis County Sheriff's Department, Environmental Crimes Unit, and Sgt. Douglass MacDougall, Travis County Attorney's Office, Enforcement Division. Persons with additional environmental expertise also assisted in an advisory capacity.

My belief of the foregoing statement is based upon personal observation during an investigation of this incident, and information from numerous sources including the official records of the Texas Secretary of State, the Texas Comptroller of Public Accounts, the Texas Commission on Environmental Quality, laboratory analysis results from the Texas Parks and Wildlife Contaminants Laboratory and eyewitness accounts of residents in the area of the discharge.

I, _____, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on



Dana DeBeauvoir, County Clerk
By Deputy: *clb*

FILED FOR RECORD
2009 SEP 25 PM 1:12
DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

11-25-09

On the morning of 09/15/2009, at approximately 8:35 a.m., your Affiant was traveling eastbound on Moore Road, a rural roadway maintained by Travis County. At approximately the 12000 block, affiant noticed the strong odor of what he suspected was sewer gas. From his experience as a Professional Sanitarian, affiant knew this odor was often caused by the breakdown of organic matter, in which hydrogen sulfide is released as a by-product. Affiant continued traveling eastbound until he reached SH 130, where he turned around and traveled westbound.

When affiant arrived back at the area where he had noticed the odor, he crossed a Travis County stormwater structure which consisted of two 24 inch drainage culverts beneath the roadway. Affiant noticed that each end of the pipes was set in concrete abutments. To the south of the roadway, there were two outfalls coming from a dry stormwater retention pond. This facility was known by affiant to belong to a distilling operation called the **Fifth Generation, Inc. (aka Tito's Distillery)**. To the north of the roadway, affiant observed the drainage culverts discharging a dark gray liquid that flowed into an unnamed tributary of Dry Creek. Affiant has personal knowledge that this watercourse drains through a small stock tank located on an adjacent owner's property and then continues to flow into Dry Creek. At this time affiant felt it would be prudent to call for assistance as there appeared to be some type of illicit discharge from the **Fifth Generation** site.

Upon the arrival of Detective Sidney Parker, TCSO, the situation was assessed, and affiant collected samples of the discharge in the watercourse for laboratory analysis. Using U.S. EPA Resource Conservation and Recovery Act (RCRA) methods, affiant collected samples at each of the outfalls from the **Fifth Generation** site, and also from both the south and north sides of the County drainage culverts. After obtaining permission from Roberto Chavira, the adjacent property owner on the north side of **Fifth Generation** property, affiant collected an additional sample where the tributary of the creek flowed into the Chavira stock tank. While in the area of the stock tank, the odor of hydrogen sulfide was much more intense than it had been previously. There was no noticeable aquatic life around the edges of the stock tank, and affiant noticed a dead turtle floating in the pond. Due to possible damage to aquatic life, Sgt. Jonathan Gray, TPWD, was contacted and asked to assist at the scene. Also, with the possible contamination of the watershed, the City of Austin Spills team was contacted and Investigator Stan Tindall was asked for assistance. Chavira was also cautioned to restrict livestock access to the tank.

After the arrival of Gray and Tindall, contact was made with management of **Fifth Generation**. Affiant spoke by phone with the owner and president of the company, Bert (Tito) Beveridge, (DOB 09/08/1961, TxDL 09144755). Beveridge was not on site at the time but stated that he would be returning in approximately one hour. Affiant agreed to meet with him at the **Fifth Generation** site at 1:00 p.m.

As affiant was approaching the offices of **Fifth Generation** he noted that the entire site consisting of approximately 12 acres, was under construction. The majority of the driveways were unpaved and rutted, and most buildings and structures were in partial stages of completion. There was also evidence of on-going excavation, and stormwater retention ponds were partially completed and partially sodded. Also affiant noticed a steady stream of water flowing across both of the dry uncompleted stormwater retention ponds directly to the outfall of each, and continuing into the County drainage culverts.

FILED FOR RECORD
SEP 25 PM 1:00
DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS
I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 9-15-09



Dana DeBeauvoir, County Clerk
By Deputy: C. Uvo

At approximately 1:30 p.m., your affiant, Gray and Tindall met with Beveridge. Beveridge voluntarily provided all the facility information included in this affidavit. Affiant then suggested a look around the facility to locate a possible source of the water pollution. Beveridge agreed with affiant's suggestion. Affiant was informed by Beveridge that there was no engineer on site nor any drawings or diagrams showing the placement of surface or subsurface structures. Affiant proceeded to the building located to the east of the entrance driveway. This building housed multiple silos used in the distillation process. The silos ranged in size from about 15,000 gallons to 22,000 gallons. While touring the inside of the building, affiant noticed multiple leaking pipes and spraying water. Affiant also noticed a trench drain designed to catch and transport wastewater, which consisted of a combination of ethanol and process cooling water, to the exterior of the building. This trench was caked with debris and was apparently only partially effective. There was also a large area where water had been running for an extended amount of time. This area was covered with black mold and slime. There were also several flexible hoses used for transferring product from one silo to another, lying unprotected on the concrete. When asked, Beveridge explained that the trench drain was connected to the stormwater system just outside the building. Beveridge also stated that the wastewater flowed directly to the dry stormwater pond. While viewing the area where the connection from the trench to the stormwater drain occurred, affiant noted a large amount of water flowing around the north side of this same building and into the same stormwater drain. Affiant later found an overflowing cooling tower to be the source of the water.

Affiant then walked around the east end of the building and along the side of the eastern most dry stormwater retention pond. At this point, the odor of septic waste was highly noticeable. At the southernmost end of this dry stormwater retention pond, affiant observed a black colored wastewater flowing from the facility stormwater collection system into the retention pond. The black wastewater flowed the width of the pond and directly discharged from the outfall into the drainage culverts beside the roadway. This event was consistent with affiant's observation while previously stopped on the roadway. Affiant traced the source of the black wastewater across the driveway to a low point in the ground where the wastewater was standing. The ultimate source of this pool of wastewater was traced to the outfall pipes of the trench drains in the warehouses where the bottling of product occurs. A floating switch was observed in the pond, indicating that a sump type pumping mechanism would be automatically activated when the black wastewater reached a certain level. Flexible drain hoses were also observed traversing from one low spot to another.

Affiant, still accompanied by Beveridge, then observed the operations inside the easternmost warehouse and the southernmost warehouse. The actual bottling of finished product occurred inside each of these structures. In these warehouses, beneath the filling lines, there were trench drains which collected wastewater, that consisted of rinse water and spilled vodka. These trench drains then directed the flow of wastewater to the exterior of the building where it was discharged onto the surface of the ground. In observing the trench drains, affiant noted that the drains were caked with debris and bottling material, which restricted the flow, causing the wastewater to become stagnant. Beveridge informed affiant that at the end of each of working day, he instructed workers to "wash down" the spillage in the work area directly into the trench drain, located in the product bottling area.

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 9-25-09



Dana DeBeauvoir, County Clerk
By Deputy: C. V. W.

FILED FOR RECORD
2009 SEP 25 PM 4:00
TRAVIS COUNTY CLERK'S OFFICE

Shortly thereafter, your Affiant and Gray left the **Fifth Generation** facility and proceeded to take additional samples for laboratory analysis. These samples included discharges of the waste water from the drainage culverts. In addition to Gray, affiant was accompanied by Doug MacDougall, TCAO, who assisted with documentation of the sampling process. Gray transported the samples to the Texas Parks and Wildlife Senior Chemist.

On the morning of 09/16/2009, at approximately 8:45 a.m., your Affiant received a call from Sidney Parker who informed him that Chavira said that Beveridge informed him that a spill had occurred at the **Fifth Generation** facility and that it had discharged in Chavira's stock tank. Chavira further informed Parker that Beveridge wanted to pump the wastewater from Chavira's stock tank and refill it with fresh water. Chavira told Beveridge that he felt it best to not remove anything from the property due to the on-going investigation.

Your Affiant also received a call from Stan Tindell, who informed affiant that Beveridge called and proposed pumping the wastewater from the stock tank pond, treating it and pumping it back to the stock tank. Tindell told Beveridge that he could not do that, since he was not permitted to treat wastewater. Beveridge then suggested pumping the stock tank and holding the wastewater in a container on the facility and later transporting it to a wastewater treatment facility. Beveridge was informed by Tindell to take no further action, until he could get an official determination on the matter.

At around 9:40 a.m. affiant returned to Chavira's property. Parker had already arrived and observed that the level of the water in the stock tank had risen by several inches. The increase in the water level was also evidenced by the fact that affiant could no longer gain access to the point where the sample had been collected on the previous day.

Shortly thereafter, Gray arrived along with Pamela Hamlett, TPWD Senior Chemist. After observing the stock tank, affiant proceeded to the **Fifth Generation** facility and met with Beveridge. Beveridge was asked about the spill that had occurred that morning. Beveridge stated that a valve had malfunctioned and came off of a silo. He further stated that an employee had to put the valve back into place with vodka spraying out of the silo because there was no other way to stop the flow. Afterward the spill was washed down with water and into the trench drains.

In the discussion between Beveridge, Gray and Hamlett, it was concluded that the wastewater discharged from the production areas via the trench drains was in fact, an industrial process waste, which contained ethanol (corn alcohol), the primary ingredient in vodka. Gray stated that the discharge from the faulty valve that morning was a reportable spill and needed to be reported to the TCEQ Regional Office. Prior to departure, Gray provided Beveridge with a card upon which he wrote the telephone number for the TCEQ and the name of the Regional Director and Program Director.

On 09/18/2009, your Affiant and Gray met with Chavira on his property at 12014 Moore Road. Chavira informed affiant that this incident was not the first time that he had been concerned about the water in his stock tank. Chavira explained that in late March or early April of this year he contacted Beveridge about the color of the water and the foam floating in his stock tank.

FILED FOR RECORD
2009 SEP 25 AM 10:02
DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS
I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 9-25-09
Dana DeBeauvoir, County Clerk
By Deputy: C. U. W.

Beveridge and another unnamed employee came onto Chavira's property to look at the stock tank. Chavira told Beveridge that "I don't want to poison my horses." Chavira also said that the water smelled real bad. Chavira further stated that Beveridge retrieved a plastic bottle that was on the ground, filled it with water from the stock tank, and told Chavira that he would have it analyzed to see if it was harmful. Chavira told Beveridge that the silt from his property had filled in his stock tank which was, at one time, about 14 feet deep. He also told him the private culvert where the creek enters the stock tank was filled in and corroded. Chavira stated that as of 09/16/2009 Beveridge had not contacted him.

Later that same day, Gray reported that the TPWD had analyzed the environmental samples collected on 09/15/2009. The analysis included Chemical Oxygen Demand (COD) and Sulfide. According to the laboratory, the COD of the samples ranged from 290 ppm to 2130 ppm, well above the reportable limit of 200 ppm. Sulfides were reported as 0.99 ppm, well in excess of the reportable limit of 0.02 ppm. Affiant was informed by the TPWD Lab staff that the results indicated that the pollution was not naturally occurring and was consistent with an industrial waste determination.

Your affiant has researched the on-line central registry of the Texas Commission on Environmental Quality and has found that neither **Fifth Generation, Inc.** or Tito's Distillery have been issued a permit, registration, or other authorization allowing the discharge of industrial process wastewater into water in the state. Your affiant has also contacted the Region 11 Offices of the Texas Commission on Environmental Quality and verified that as of 09/21/2009, there had been no report of any accidental discharges or spills from the site.

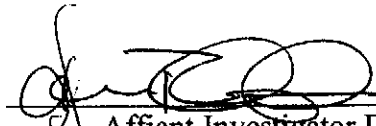
Your affiant has researched the records of the Texas Secretary of State, which indicate that **Fifth Generation, Inc.**, filing number 134601000, is a Domestic For-Profit Corporation, and that the Registered Agent for the company is Bert Beveridge, with an address of 2109 Scenic Dr., Austin, TX 78703. Records also indicate that Beveridge is the President of the corporation.

Your affiant has researched records of the Texas Comptroller of Public Accounts, which indicate that **Fifth Generation, Inc.**, taxpayer id number 17427376888, with a mailing address of 12101 Moore Road, Austin, TX 78719, has an active sales tax permit.

Based upon prior experience, your affiant believes that probable cause exists for the issuance of a **summons** in the name of the accused.


This offense occurred in Travis County, in the State of Texas,

Against the peace and dignity of the State of Texas.



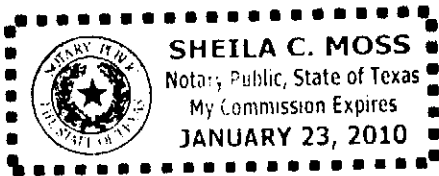
Affiant Investigator Dennis Rudder

FILED FOR RECORD
2009 SEP 25 PM 4: 02
DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 9-25-09
Dana DeBeauvoir, County Clerk
By Deputy: 



SWORN AND SUBSCRIBED TO BEFORE ME BY THE SAID AFFIANT ON THIS THE
22nd DAY OF September, 2009



Sheila C Moss
Notary Public in and for
Travis County, Texas
My Commission Expires 1-23-2010


On this the _____ day of _____, 9/25, 2009, I hereby acknowledge
I have examined the foregoing affidavit and have determined that probable cause exists for the
issuance of a summons in the name of the individual accused therein.

[Signature]
Magistrate
(COUNTY) COURT
(C.C. AT LAW # 3)
TRAVIS COUNTY, TEXAS

FILED FOR RECORD
2009 SEP 25 PM 4: 02
DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

Fifth Generation, Inc.
aka Tito's Distillery
Bert Beveridge, Registered Agent
2109 Scenic Dr.
Austin, TX 78703

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 9-25-09
Dana DeBeauvoir, County Clerk
By Deputy: [Signature]



IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Before me, the undersigned Assistant County Attorney of Travis County, Texas, this day appeared the undersigned affiant, who being duly sworn does state upon his oath that he has good reason to believe and does believe that heretofore, before the making and filing of this complaint, in Travis County, Texas

First Generation, Inc., aka Tito's Distillery, by and through its agent, on or about the 15th day of September, 2004, did then and there discharge and allow the discharge of a waste and pollutant, to wit: an industrial process wastewater containing ethanol, into water in the state, namely a tributary of Dry Creek, at or near 12000 block of Moore Road in Travis County Texas, that caused and threatened to cause water pollution, said discharge not being in strict compliance with all required permits and with an order issued or rule adopted by the appropriate regulatory agency, namely the Texas Commission on Environmental Quality.

FILED FOR RECORD
2009 SEP 25 PM 4: 02
DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

AGAINST THE PEACE AND DIGNITY OF THE STATE.

Sworn to and subscribed before me on

[Signature] 9/22/2009
Affiant

[Signature]
Assistant County Attorney of
Travis County, Texas

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 9-25-09
Dana DeBeauvoir, County Clerk
By Deputy: [Signature]



SUMMONS

THE STATE OF TEXAS

TO ANY SHERIFF OF THE STATE OF TEXAS - GREETINGS

YOU ARE HEREBY COMMANDED TO SUMMON - TO APPEAR IN PERSON CAUSE #C1CR09-402083

Fifth Generation, Inc.
aka Tito's Distillery
Registered Agent: Bert Beveridge
2109 Scenic Dr.
Austin, TX 78703

Before the Honorable County Court at Law # 9 of Travis County, Texas at the Courthouse of said County in the City of Austin, Texas at 8:30 a.m., on the day of October 19, 2009 or at or before 10 a.m. of the Monday next after the expiration of 20 days after this summons is served then and there to answer THE STATE OF TEXAS upon a charge by complaint and information pending in said Court, charging IT with the offense of:

UNAUTHORIZED DISCHARGE, TEXAS WATER CODE CHAPTER 7.147

FAILURE TO APPEAR before this Court in answer to this SUMMONS will cause the Court to immediately enter a plea of Not Guilty on the corporation's behalf and may proceed with Trial, Judgment and Sentencing.

Witness my signature and official seal, this day September 25, 2009

DANA DeBEAUVOIR, COUNTY CLERK
TRAVIS COUNTY, TEXAS

BY: [Signature], DEPUTY



It is an offense for a person to intentionally influence or coerce a witness to testify falsely or to elude legal process. It is also a felony offense to harm or threaten to harm a witness or prospective witness in retaliation for or on account of the service of the person as a witness or to prevent or delay the person's service as a witness to a crime.

Es una ofensa criminal que una personal trate de influir o caoccionar intencionalmente a un testigo para que testifique falsamente o para que eluda al proceso legal. Tambien en una felonía danar o amenazar con harcerle dano a un testigo, o a uno que se espera sera testigo, como venganza o por razon del servicio de la persona como testigo, o previnir o restraar el servicio de la persona como testigo a un crimen.

PEACE OFFICER'S RETURN OF SUMMONS

Came to hand the ___ day of ___, A.D., 20__ at ___ o'clock __.M., and executed on the ___ day of ___, A.D., 20__ at ___ o'clock __.M., by personal delivery to the registered agent of the above named Defendant at the above stated address a copy of this summons.

FEES..... \$5.00

TRAVIS COUNTY, TEXAS

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on 10-15-09
Dana DeBeauvoir, County Clerk
By Deputy: [Signature]



BY: _____, PEACE OFFICER
TRAVIS COUNTY ATTORNEY'S OFFICE

FILED FOR RECORD
DANA DeBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS
SEP 22 2009 4:02 PM