

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 1:24-CR-39-MJT
	§	SEALED
TPC GROUP LLC	§	

**NOTICE REGARDING VICTIM OUTREACH**

The United States hereby provides notice regarding victim outreach and notification in this case.

**I. INTRODUCTION**

This is a criminal case, and a Notice of Hearing for an Initial Appearance, Arraignment & Change of Plea is set for May 21, 2024, at 2:00 p.m. in Courtroom 6 (Beaumont) before Magistrate Judge Zack Hawthorn. (Docket entry entered on April 30, 2024). On May 9, 2024, the Court publicly unsealed this case to permit “the United States to meet its obligation to provide victims with ‘reasonable, accurate, and timely notice of any public court proceeding.’” 18 U.S.C. § 3771(a)(2). (ECF Doc. No. 8, filed on May 9, 2024).

The defendant, TPC Group LLC, is incorporated in Texas and has a principal office in Houston, Texas. It has multiple facilities including one in Port Neches, Jefferson County, Texas, referred to as the Port Neches Operations facility (“TPC PNO facility”). In 2019, the TPC PNO facility produced hydrocarbon derivatives including 1,3-butadiene (“Butadiene”), which is primarily used to manufacture synthetic rubber and resins.

## **II. BACKGROUND**

### **A. Explosion and Aftermath**

In the early morning of November 27, 2019, an explosion and chemical release occurred at the TPC PNO facility resulting in the evacuation of approximately 50,000 people, offsite property damage of approximately \$133 million, and the release of 11,337,920 pounds of extremely hazardous substances, among other damages to human health and the environment. Four employees and one contractor suffered injuries including concussions, burns, perforated eardrums, tinnitus, and cracked teeth.

The explosion occurred at the South Unit of the TPC PNO facility. A secondary explosion followed, and a series of fires erupted at the facility and emitted contaminants into the air. As a result of the explosions, mandatory evacuations were ordered for residents within a four-mile radius of the facility, voluntary orders to shelter in place were issued for residents in the surrounding area, and local schools were closed for multiple days to allow buildings to be cleaned, repaired, and inspected.

Butadiene, a hazardous chemical and extremely flammable liquid and vapor, is used in the production of tires, latexes, and plastics. Butadiene can form into a hard and insoluble white crystalline polymer known as “popcorn polymer.” Popcorn polymer can form when oxygen reacts with Butadiene and can grow at a constantly accelerating rate which has the potential to cause serious or catastrophic events, including explosions and fires. The growth of popcorn polymer, which will continue unless otherwise inhibited, is particularly common in piping systems with little or no flow or turbulence, known as “deadlegs.” The November 27, 2019, explosion at the TPC PNO facility was caused by

the uninhibited growth of popcorn polymer in a line from one of the facility's towers.

After the explosion, TPC Group established a center to process claims by affected community members for evacuation expenses, damage to property and debris removal. See In re TPC Grp., Inc., Case No. 22-10493-CTG at ECF Doc. No. Doc. 217 at 28 (D. Del Bankruptcy Court filed June 1, 2022) (Bankruptcy Case). The defendant has voluntarily made significant restitution payments arising out of the explosion. The total value of all restitution paid to date is approximately \$212.6 million, including: (1) payments totaling \$137,337,615 from TPC's voluntary claims program, consisting of property damage, evacuation and other claims; (2) other community restitution, such as air and water monitoring, in the amount of \$45,210,000; and (3) payment of \$30,000,000 to be distributed by the Bankruptcy Trustee under Case No. 22-10493 to all unsecured creditors, including plaintiffs with tort causes of action related to the conduct underlying and related to the defendant's plea of guilty. (Final decisions on the distribution from the General Unsecured Creditors fund are being determined by the Bankruptcy Trustee).

Extensive litigation arose out of the explosion. Lawsuits seeking damages were transferred into a single court, presided over by the Honorable Judge Courtney Arkeen of the 128th Judicial District Court of Orange County. Id.

On June 1, 2022, TPC Group filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. (Bankruptcy Case at Doc. 1). Thereafter, a Joint Chapter 11 Plan was approved by the court with an effective date of December 16, 2022. Id. at Doc. 1333; see also, <https://cases.ra.kroll.com/TPCGroup/Home-Index>. On that date, TPC Group emerged from the restructuring process and bankruptcy protection. See "TPC Group

Successfully Completes Financial Restructuring,” available at

<https://www.tpcgrp.com/news-and-events/news/tpc-group-successfully-completes-financial-restructuring> (Dec. 2, 2022).

B. The Crime Victim’s Rights Act (CVRA)

A victim is “a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime.” 34 U.S.C. § 20141(e)(2). Under the CVRA, a “crime victim” is defined as “a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.” 18 U.S.C. § 3771(e)(2)(A).

Crime victims are afforded certain enumerated statutory rights, including the “reasonable right to confer with the attorney for the Government in the case,” as well the “right to be informed in a timely manner of any plea bargain.” 18 U.S.C. §§ 3771(a)(5) and (a)(9). Courts must ensure that victims are provided these rights. 18 U.S.C. § 3771(b)(1). This “independent obligation” on the judiciary includes the requirement to obtain advance permission from the court to take certain actions under the CVRA. 18 U.S.C. § 3771(d)(2) (“the court shall fashion a reasonable procedure to give effect to this chapter”). Prior judicial approval guards against adverse consequences of an erroneous unilateral interpretation of the CVRA by the government. United States v. Ingrassia, No. CR-04-0455ADSJO, 2005 WL 2875220, at \*9 (E.D.N.Y. Sept. 7, 2005) (government could not properly rely on alternate CVRA notification procedure “without advance permission from the court”).

The statute provides special provisions for cases involving multiple crime victims

and allows a court to fashion reasonable procedures that do not “unduly complicate or prolong the proceedings.” 18 U.S.C. § 3771(d)(2). Specifically:

(2) Multiple crime victims.--In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

Id. Government web page notification has been approved in cases with large groups of potential victims, where individual notification “would impose significant costs and burdens.” United States v. Liang, Case No. 16-20394 at Docs. 39, p. 4 and 43, p. 1 (E.D. Mich. 2017) (“[T]he United States Department of Justice may provide reasonable, accurate, and timely notice to crime victims through publication on the websites of the prosecuting components”).

Importantly, the CVRA flatly prohibits any limitation on the executive branch’s exclusive authority on who to charge, what to charge, and when to charge it: “Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.” 18 U.S.C. § 3771(d)(6). This ensures compliance with the Constitution’s clear demarcation of powers between the judiciary and executive branches. See United States v. Nixon, 418 U.S. 683, 693 (1974) (“the Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case”). Prosecutorial discretion “flows not from a desire to give carte blanche to law enforcement officials but from recognition of the constitutional principle of separation of powers.” United States v. Ream, 491 F.2d 1243, 1246 n.2 (5th Cir. 1974). Thus, “intervention by the court in the internal affairs of the Justice Department would

clearly constitute a violation of the Separation of Powers doctrine.” United States v. Renfro, 620 F.2d 569, 574 (6th Cir.1980).

C. Court Order Authorizing Potential Crime Victim Notification

The United States filed a “Motion to Notify Potential Crime Victims” with the District Court for the Eastern District of Texas, and on July 13, 2023, the court issued an “Order Authorizing Potential Crime Victim Notification.” In Re: TPC Group LLC Investigation, No. 1:23-MC-00007 (E.D. Texas July 13, 2023). In that order, Judge Truncale stated:

1. To the extent they are reasonably able to be identified, the Government will make reasonable efforts, in its discretion and where practicable and do not unduly complicate or prolong the proceedings, to send letters to potential victims (or their counsel) related to the November 27, 2019, explosion. A template for these letters is attached as Appendix A.
2. The Government will personally contact each of the potential victims known to be injured in the November 27, 2019, explosion, and ensure that they have an opportunity to confer with the attorney for the Government in the case.
3. The large number of potential victims in this case makes individual notice for all victims impractical. 18 U.S.C. § 3771(d)(2). The following constitutes a reasonable procedure to give effect to the CVRA that will not unduly complicate or prolong the proceedings. *Id.* The Government will provide public notice, containing the information attached as Appendix B, via:
  - i. Media outlet(s) of general circulation in the Port Neches, Texas area (Beaumont Enterprise, Port Arthur News, and Beaumont Examiner); and
  - ii. A website located at the Department of Justice webpage entitled “Current Case Information for Crime Victims,” at <https://www.justice.gov/enrd/current-case-information-crime-victims>.

### III. POTENTIAL CRIME VICTIM NOTIFICATION EFFORTS

The United States has reached out to potential victims regarding this case. These efforts included:

- On March 3, 2022, an EPA representative identified Nextdoor<sup>1</sup> communities surrounding the TPC PNO facility and sent a notice to those Nextdoor members. The EPA representative asked Nextdoor members to contact him through email if they had property damage from the explosion. That message was reposted on April 5, 2022. The EPA received 9 messages from alleged victims through Nextdoor who were in turn emailed victim notification letters.
- From on or about July 10, 2023, to July 18, 2023, an EPA Special Agent contacted or attempted to contact individuals injured in the explosion. For those victims who were successfully contacted, their input or opinion was sought regarding the outcome of the criminal investigation.
- On July 27-28, 2023, letters were emailed to 87 counsel/organizations representing potential victims, notifying them regarding the criminal investigation and providing contact information to provide input or victim impact statements.
- On July 27, 2023, a webpage entitled “TPC Group LLC Investigation-Port Neches Explosion” was established at the following location: <https://www.justice.gov/enrd/case/tpc-group-llc-investigation-port-neches-explosion>. This Department of Justice webpage provided notice of the criminal investigation and publicly available facts regarding the November 27, 2019, explosion. It also described the CVRA, provided details on how to contact the Department of Justice, discussed the possibility of plea agreements, and sought “views regarding potential plea agreements, or any other aspect of the case.” On May 10, 2024, the webpage was updated to provide notice regarding this criminal case and the Notice of Hearing for an Initial Appearance, Arraignment & Change of Plea set for May 21, 2024.
- Notice of the criminal investigation was provided in local media outlets of general circulation. That notice contained publicly available facts regarding the November 27, 2019, explosion, described the CVRA, provided details on how to contact the Department of Justice, discussed the possibility of plea agreements, and sought

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<sup>1</sup> Nextdoor Holdings, Inc. is an American company that operates a hyperlocal social networking service for neighborhoods. See <https://en.wikipedia.org/wiki/Nextdoor>.

“views regarding potential plea agreements, or any other aspect of the case.” Specifically, the media outlets and run dates were:

- The Port Arthur News: run dates: August 9, 12, 16, and 19, 2023.
- The Beaumont Enterprise: run dates: August 9, 10, 15, and 17, 2023.
- The Examiner: run dates: August 10, 17, and 24, 2023.
- On May 13, 2024, a link was placed on the website of the United States Attorney’s Office, Eastern District of Texas, entitled “TPC Group LLC Investigation-Port Neches Explosion.” This link, which accessed the Department of Justice webpage referenced above, is at the following location: <https://www.justice.gov/usao-edtx/environmental-justice-and-public-health>.
- Email notifications were made by the Department of Justice on May 16-17, 2024, to individuals who contacted the Government regarding this matter, including in response to EPA and DOJ notices. The email notifications informed the recipients regarding this criminal case and the Initial Appearance, Arraignment & Change of Plea scheduled for May 21, 2024.

#### **IV. CONCLUSION**

As described above, significant notification has been provided by the United States pursuant to a court order authorizing that notification. This robust notice and extensive focus on victim participation was also undertaken mindful of the statutory requirement that the court shall, in cases involving large numbers of victims, fashion a reasonable procedure to give effect to the statute that does not unduly complicate or prolong the proceedings pursuant to 18 U.S.C. § 3771(d)(2).



Respectfully submitted,

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**Certificate of Service**

I certify that on May 21, 2024, I filed this document with the Clerk, and have separately emailed a copy to counsel for TPC Group LLC:

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